

## **EXHIBIT A**

**Transcript of Deposition of Patrick Kelly,  
Volume 1 – 05/10/2019**

**Kelly, Patrick**

Volume 1 - 05/10/2019

Condensed Proceeding with Highlighted Clips

Printed 10/16/2020 12:10PM CDT

**CONFIDENTIAL**

Plaintiff Initial

00001  
01: IN THE UNITED STATES DISTRICT COURT  
02: FOR THE NORTHERN DISTRICT OF OHIO  
03: EASTERN DIVISION  
04: - - -  
05:  
IN RE: NATIONAL : HON. DAN A.  
06: PRESCRIPTION OPIATE : POLSTER  
LITIGATION :  
07: :  
APPLIES TO ALL CASES : NO.  
08: : 1:17-MD-2804  
:  
09:  
- HIGHLY CONFIDENTIAL -  
10:  
SUBJECT TO FURTHER CONFIDENTIALITY REVIEW  
11:  
- - -  
12:  
May 10, 2019  
13:  
- - -  
14:  
15: Videotaped deposition of  
PATRICK KELLY, taken pursuant to notice,  
16: was held at the offices of Baron & Budd,  
600 New Hampshire Avenue, NW, Washington,  
17: D.C., beginning at 8:58 a.m., on the  
above date, before Michelle L. Gray, a  
18: Registered Professional Reporter,  
Certified Shorthand Reporter, Certified  
19: Realtime Reporter, and Notary Public.

p. 00001

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01: - - -  
02: I N D E X  
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05: PATRICK KELLY  
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14: NO.      DESCRIPTION      PAGE  
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16: Notice of Subpoena  
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19: Of HDMA DEA  
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20: 10/31/16  
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05: NO.      DESCRIPTION      PAGE  
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02: E X H I B I T S (Cont'd.)  
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05: NO. DESCRIPTION PAGE  
06: HDA  
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07: 10/28/11  
        Subject, DEA Question  
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09: HDA  
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17: Kelly-11 NWDA Suspicious 108  
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18: System  
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01: - - -  
02: E X H I B I T S (Cont'd.)  
03: - - -  
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05: NO. DESCRIPTION PAGE  
06: HDA  
    Kelly-13 E-mail Thread 122  
07: 1/17/08  
        Subject, Rewrite  
08: HDA\_MDL\_000139414-15  
09: HDA  
    Kelly-14 E-mail Thread 131  
10: 2/6/08  
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20: Arlington VA  
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21: Subject, Suspicious  
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22: HDA\_MDL\_000150198  
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03: - - -  
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05: NO. DESCRIPTION PAGE  
06: HDA  
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15: 2/12/08  
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17: Kelly-21 E-mail Thread 210  
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18: Subject, HDMA RAC  
    Conference Call Reminder  
19: CAH\_MDL2804\_01521412-69  
20: HDA

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01: - - -  
02: E X H I B I T S (Cont'd.)  
03: - - -  
04:  
05: NO. DESCRIPTION PAGE  
06: HDA  
    Kelly-23 Draft Summary of the 231  
07: DEA-HDMA Meeting  
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08: CAH\_MDL2804\_02489188-90  
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10: Kelly-24 E-mail Thread 242  
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12: HDA\_MDL\_000156499-01  
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22: Document and  
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23: Anda\_Opioids\_MDL\_0000157358-73  
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20: CAH\_MDL2804\_02489191-96  
21: HDA  
    Kelly-27 HDMA Industry 283  
22: Compliance Guidelines  
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23:  
24:

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01: - - -  
02: E X H I B I T S (Cont'd.)  
03: - - -  
04:  
05: NO. DESCRIPTION PAGE  
06: HDA  
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07: To Gray from Goggin  
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08:  
    HDA  
09: Kelly-29 Slide Deck Webinar 287  
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10: Guidelines: Reporting  
    Suspicious Orders  
11: and Preventing Diversion  
    Of Controlled Substances  
12: 11/14/08  
    HDA\_MDL\_000145918-69  
13:  
    HDA  
14: Kelly-30 E-mail Thread 294  
    6/12/13  
15: Subject, For Review  
    RX Drug Abuse/Diversion  
16: One Pager  
    HDA\_MDL\_000080421-24  
17:  
    HDA  
18: Kelly-31 Chronology of 299  
    HDMA/DEA Executive  
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00017  
01: - - -  
02: E X H I B I T S (Cont'd.)  
03: - - -  
04:  
05: NO. DESCRIPTION PAGE  
06: HDA  
    Kelly-32 E-mail Thread 302  
07: 10/1/13  
    Subject, HDMA - Review  
08: Requested by Thursday  
    10/3 12 Noon Eastern  
09: HDA\_MDL\_000081415-16  
10: HDA  
    Kelly-33 GAO Meeting on DEA 303  
11: Draft TPs 9/20/10  
    HDA\_MDL\_000139905-10  
12:  
    HDA  
13: Kelly-34 E-mail Thread 314  
    4/20/12  
14: Subject, DEA  
    Initiatives  
15: HDA\_MDL\_000215234-36  
16: HDA  
    Kelly-35 E-mail Thread 331  
17: 12/19/13  
    Subject, Follow-up  
18: HDMA Drug Diversion  
    Task Force  
19: Meeting 12/11/13  
    CAH\_MDL2804\_01110712-15  
20:

Board of Directors'  
20: Drug Abuse  
    1/2/18  
21: HDA\_MDL\_000155930-47  
22:  
23:  
24:

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01: - - -  
02: E X H I B I T S (Cont'd.)  
03: - - -  
04:  
05: NO. DESCRIPTION PAGE  
06: HDA  
    Kelly-36 E-mail Thread 347  
07: 9/22/14  
    Subject, Manufacturer  
08: Issue with Imminent  
    Danger Definition  
09: HDA\_MDL\_000214864-65  
10: HDA  
    Kelly-37 E-mail Thread 351  
11: 1/15/15  
    Subject, Reintroduction  
12: Of Ensuring Patient  
    Access and Effective  
13: Drug Enforcement Act  
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    HDA  
15: Kelly-38 E-mail Thread 354  
    3/5/15  
16: Subject, Final Letter  
    Of Support for Ensuring  
17: Patient Access and  
    Effective Drug Enforcement  
18: Act of 2015  
    HDA\_MDL\_000081651-54  
19:  
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01: - - -  
02: E X H I B I T S (Cont'd.)  
03: - - -  
04:  
05: NO. DESCRIPTION PAGE  
06: HDA  
    Kelly-40 E-mail Thread 360  
07: 3/24/14  
    Subject, Coordination  
08: Call Today?  
    MCKMDL00651560-64  
09:  
    HDA  
10: Kelly-41 E-mail Thread 370  
    5/1/17  
11: Subject, HDA Letters  
    Supportive of Opioid  
12: Approaches in the States  
    HDA\_MDL\_000214979-82  
13:  
    HDA  
14: Kelly-42 E-mail Thread 375  
    8/5/08  
15: Subject, HDMA RAC  
    Conference Call  
16: Reminder  
    CAH\_MDL2804\_01364288-300  
17:  
    HDA  
18: Kelly-43 E-mail Thread 382  
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19: Subject, New DEA

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20: Kelly-39 Statement from John 355  
    M. Gray, President and  
21: CEO HDMA  
    4/7/14  
22:  
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TPs  
20: HDA\_MDL\_00088099-01  
21: HDA  
    Kelly-44 E-mail Thread 389  
22: 2/23/12  
    Subject, Draft Amicus  
23: Brief Cardinal v Holder  
    HDA\_MDL\_000215212-33  
24:

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00020  
01: - - -  
02: E X H I B I T S (Cont'd.)  
03: - - -  
04:  
05: NO. DESCRIPTION PAGE  
06: HDA  
Kelly-45 E-mail Thread 393  
07: 2/27/12  
Subject, Cardinal's  
08: Counsel's Comments  
On Amicus Brief  
09: HDL\_MDL\_000215970-73  
10: HDA  
Kelly-46 E-mail Thread 398  
11: 3/5/12  
Subject, HDMA Amicus  
12: Brief Cardinal v Holder  
HDA\_MDL\_000216300-02  
13:  
HDA  
14: Kelly-47 E-mail Thread 404  
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15: Subject, Masters Suit  
Draft Amicus Outline  
16: For Your Consideration  
HDA\_MDL\_000219211-13  
17:  
HDA  
18: Kelly-48 E-mail Thread 406  
1/18/16  
19: Subject, Action Requested  
HDMA/Masters Amicus Brief

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00021  
01: - - -  
02: E X H I B I T S (Cont'd.)  
03: - - -  
04:  
05: NO. DESCRIPTION PAGE  
06: HDA  
Kelly-50 E-mail Thread 412  
07: 10/29/15  
Subject, HDMA Amicus  
08: Brief  
HDA\_MDL\_000212579-16  
09:  
HDA  
10: Kelly-51 Letter, 4/27/84 420  
To Streck from Gitchel  
11: CAH\_MDL2804\_02201918-20  
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20: HDA\_MDL\_000215966-67  
21: HDA  
Kelly-49 E-mail Thread 408  
22: 4/5/16  
Subject, Amicus Brief  
23: Files in Masters Case  
HDA\_MDL\_000162206-56  
24:

00022  
01: - - -  
02: DEPOSITION SUPPORT INDEX  
03: - - -  
04:  
05: Direction to Witness Not to Answer  
06: PAGE LINE  
None.  
07:  
08: Request for Production of Documents  
09: PAGE LINE  
30 18  
10:  
11: Stipulations  
12: PAGE LINE  
None.  
13:  
14: Questions Marked  
15: PAGE LINE  
429 4  
16:  
17:  
18:  
19:  
20:  
21:  
22:  
23:  
24:

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00023

01: - - -  
02: THE VIDEOGRAPHER: We are  
03: now on the record. My name is  
04: Daniel Holmstock. I'm the  
05: videographer for Golkow Litigation  
06: Services.  
07: Today's date is May 10,  
08: 2019. The time on the video  
09: screen is 8:58 a.m.  
10: This deposition is being  
11: held at the law offices of Baron &  
12: Budd at 600 New Hampshire Avenue  
13: Northwest, in Washington DC, in  
14: the matter of In Re National  
15: Prescription Opiate Litigation,  
16: pending before the United States  
17: District Court for the Northern  
18: District of Ohio, Eastern  
19: Division, MDL No. 2804.  
20: Our deponent today is  
21: Mr. Patrick Kelly, testifying in  
22: his individual and 30(b)(6)  
23: capacity for Healthcare  
24: Distribution Alliance.

00025

01: MR. WEINSTEIN: Brian  
02: Weinstein from Davis Polk for HDA  
03: and the witness.  
04: MS. MANNING: Meredith  
05: Manning from Davis Polk for HDA  
06: and the witness.  
07: MS. GALLENAUGH: Liz  
08: Gallenagh, general counsel for  
09: HDA.  
10: MR. TOSTADO: Sergio  
11: Tostado, Jones Day, for Walmart.  
12: MR. CRAWFORD: Kyle  
13: Crawford, Zuckerman Spaeder, for  
14: the CVS defendants.  
15: MS. WICHT: Jennifer Wicht,  
16: Williams & Connolly, Cardinal  
17: Health.  
18: MS. ADAMS: Katelyn Adams,  
19: Williams & Connolly, Cardinal  
20: Health.  
21: MR. PADGETT: Bill Padgett,  
22: Barns & Thornburg for HD Smith.  
23: MS. ROLLINS: Anne Rollins,  
24: Reed Smith, for AmerisourceBergen

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00024

01: Counsel for appearances will  
02: be noted on the stenographic  
03: record.  
04: The court reporter is  
05: Michelle Gray who will now  
06: administer the oath to the  
07: witness.  
08: - - -  
09: ...PATRICK KELLY, having  
10: been first duly sworn, was  
11: examined and testified as follows:  
12: - - -  
13: MR. PIFKO: Can we just go  
14: around the room so I know who  
15: everyone is who's here. I know  
16: we're going to keep -- the  
17: reporter said everything would be  
18: noted on the record.  
19: But if everyone can  
20: introduce yourself, your firm, and  
21: who you represent.  
22: So I'm Mark Pifko from Baron  
23: & Budd on behalf of the  
24: plaintiffs' executive committee.

00026

01: Drug Incorporation.  
02: MS. HELLER-TOIG: Elly  
03: Heller-Toig from Marcus & Shapiro  
04: for HBC Service Company.  
05: MR. SMITH: Wrede Smith from  
06: Arnold & Porter for the Endo/Par  
07: defendants.  
08: MR. STEWART: Mike Stewart,  
09: Branstetter, Stranch & Jennings,  
10: for the Tennessee case.  
11: MS. CHARLES: Amber Charles,  
12: Covington & Burling, for McKesson  
13: Corporation.  
14: MS. MARTIN: Dana Martin,  
15: Dechert, for Purdue.  
16: MS. MACKAY: Melanie MacKay  
17: from Dechert for Purdue.  
18: MR. CLUFF: Sterling Cluff,  
19: Baron & Budd.  
20: - - -  
21: EXAMINATION  
22: - - -  
23: BY MR. PIFKO:  
24: Q. All right, Mr. Kelly. My

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00027

01: name is Mark Pifko, as you just heard.  
02: We just met for the first time off the  
03: record. I'm going to be asking you some  
04: questions today.  
05: I'm want to go over some  
06: basic things before we get started.  
07: A. Yeah.  
08: Q. First and foremost, you are  
09: under oath. So you understand that your  
10: testimony here is under penalty of  
11: perjury, right?  
12: A. I do.  
13: Q. Okay. And that means that  
14: you're sworn to tell the truth, and if  
15: you are intentionally misleading or  
16: dishonest, you could be subject to  
17: penalties from the court. Do you  
18: understand that?  
19: A. I understand.  
20: Q. Is there any reason why  
21: you're not able to give truthful and  
22: accurate testimony today?  
23: A. No.  
24: Q. You've been deposed before,

00029

01: THE VIDEOGRAPHER: The only  
02: way to do that is to speak up.  
03: THE WITNESS: I can speak  
04: up. I'll speak up.  
05: BY MR. PIFKO:  
06: Q. All right. So there's no  
07: reason why you can think of that your  
08: deposition shouldn't proceed today?  
09: A. No.  
10: Q. Is there any reason why you  
11: wouldn't be able to give truthful and  
12: accurate testimony today?  
13: A. No.  
14: Q. All right. I've got some  
15: materials here. I think for the most  
16: part I'm going to ask you to confirm some  
17: information. So as long as you're  
18: truthful and honest, I think that it is  
19: going to be an easy day for you.  
20: You said that you were  
21: deposed one other time?  
22: A. Yes.  
23: Q. What -- what was that?  
24: A. We were deposed in the

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00028

01: correct?  
02: A. Yes.  
03: Q. How many times have you been  
04: deposed before?  
05: A. Once.  
06: MS. MACKAY: Mark, I'm sorry  
07: to interrupt. Can we just get on  
08: the record that an objection from  
09: one attorney is good for all?  
10: MR. PIFKO: Yeah, that's  
11: actually part of the depo  
12: protocol, so we're good on that.  
13: MS. MACKAY: Great, thank  
14: you.  
15: BY MR. PIFKO:  
16: Q. So, okay, you've been  
17: deposed one time before?  
18: A. Correct.  
19: Q. So --  
20: MR. HOUTZ: This is Lester  
21: Houtz on the phone from Bartlit  
22: Beck for Walgreens. And I'm  
23: hearing the questions fine. But I  
24: cannot hear the answers at all.

00030

01: Montana litigation.  
02: Q. Okay. Was that -- you were  
03: deposed in connection with your role for  
04: the HDA?  
05: A. Correct.  
06: Q. And when was that?  
07: A. September. I forgot the  
08: exact date.  
09: Q. Okay. Where did that  
10: happen? Was that here in DC?  
11: A. Here in Washington DC.  
12: Q. Okay. Was there a  
13: transcript of that?  
14: A. I imagine there was.  
15: Q. Okay. Have you seen the  
16: transcript?  
17: A. I have not.  
18: MR. PIFKO: Okay. We're  
19: going to request a copy of that  
20: just for potential impeachment  
21: purposes.  
22: MR. WEINSTEIN: We can talk  
23: about that offline.  
24: MR. PIFKO: Okay.

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00031

01: BY MR. PIFKO:  
02: Q. All right. So you  
03: understand that you're here to answer  
04: questions and your counsel may object  
05: from time to time. But unless he  
06: instructs you not to answer, you're still  
07: going to answer the question.  
08: Understood?  
09: A. Understood.

10: Q. Okay. So you understand  
11: that you're here in your individual  
12: capacity but you're also here as the  
13: official representative of HDA with  
14: respect to certain topics, correct?  
15: A. I understand that, yes.  
16: Q. Okay. And so that means  
17: when you answer within those topics,  
18: you're answering as if you are the HDA.  
19: Do you understand that?  
20: A. I understand that.  
21: Q. Okay. I'm going to hand you  
22: a copy of the notice.  
23: (Document marked for  
24: identification as Exhibit

00033

01: Q. And I want to turn your  
02: attention to -- there's some definitions  
03: in the notice, if you can flip a few  
04: pages in. My -- after you get through  
05: some of the initial pages, it's marked  
06: Page 3.  
07: A. Okay.  
08: Q. Are you there?  
09: A. I am.  
10: Q. It says, "The terms 'you,'  
11: 'your,' and 'HDA.'"  
12: Do you see that under D?  
13: A. I do.  
14: Q. Okay. That refers to HDA  
15: and its predecessor organizations  
16: including the Healthcare Distribution  
17: Management Association and the National  
18: Wholesale Druggists' Association, the  
19: Western Wholesale Druggists' Association.  
20: Do you see that?  
21: A. I do.  
22: Q. And you understand that when  
23: I ask you questions today about you, I'm  
24: referring to those entities, okay?

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00032

01: HDA-Kelly-1.)  
02: BY MR. PIFKO:  
03: Q. I'm handing you what's  
04: marked as Exhibit 1, which is a copy of  
05: the notice that brought us here today.  
06: Have you seen this before?  
07: A. I have.  
08: Q. When was the first time you  
09: saw this?  
10: A. Received it yesterday or the  
11: day before in preparation for this.  
12: Q. Okay. You are aware that  
13: there's topics for which you're  
14: designated?  
15: A. Yes.  
16: Q. When was the first time that  
17: you became aware of the topics for which  
18: you're designated?  
19: A. Two days ago in preparation  
20: for this.  
21: Q. So the first time that you  
22: had seen any of these topics was two days  
23: ago?  
24: A. Yes.

00034

01: A. Yes.  
02: MR. WEINSTEIN: Mark, I just  
03: ask if there are times that you're  
04: asking him in his personal  
05: capacity, when you say you, if you  
06: can make that clear, that would be  
07: great.  
08: MR. PIFKO: I think most of  
09: the questions today will be  
10: 30(b)(6).  
11: BY MR. PIFKO:  
12: Q. Okay. So I want to then  
13: turn your page -- or turn your attention  
14: a few pages in to the topics. They start  
15: on Page 5.  
16: Do you see that?  
17: A. I do.  
18: Q. Okay. Go to Topic 4, which  
19: actually is on Page 6.  
20: Do you see Topic 4?  
21: A. I do.  
22: Q. Okay. It's about the  
23: industry compliance guidelines, including  
24: the development of the guidelines,

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00035

01: communications regarding the guidelines  
02: and modifications, revisions or changes  
03: to the guidelines, and any councils,  
04: committee, task force or working groups  
05: concerning the guidelines.  
06: Do you see that?  
07: A. I do.  
08: Q. Are you prepared to provide  
09: testimony on that topic today?  
10: A. To the best -- to the best  
11: of my ability, yes.  
12: Q. Okay.  
13: MR. CRAWFORD: Go ahead on  
14: the phone again.  
15: (Brief interruption.)  
16: (Document marked for  
17: identification as Exhibit  
18: HDA-Kelly-2.)  
19: BY MR. PIFKO:  
20: Q. All right. I'm handing you  
21: what's been marked as Exhibit 2, which is  
22: a document Bates-labeled  
23: HDA\_MDL\_000081363 to 81376. Have you  
24: seen this before?

00037

01: addition to 29 other companies, yes.  
02: Q. Okay. And you also have  
03: manufacturers who are members of the  
04: organization, correct?  
05: A. They are in a different  
06: membership category, yes.  
07: Q. But they are still members?  
08: A. They are members in a  
09: different category.  
10: Q. Okay. Mallinckrodt is a  
11: member?  
12: A. In the affiliate member  
13: category I believe so, yes.  
14: Q. Okay. Purdue?  
15: A. I believe so, in the -- in  
16: the affiliate member category.  
17: Q. Janssen and Janssen?  
18: A. Johnson & Johnson?  
19: Q. Sorry. Janssen -- Janssen  
20: or Johnson & Johnson?  
21: A. Yes, I believe in the  
22: affiliate member category.  
23: Q. Actavis?  
24: A. Actavis, I believe so in the

p. 00035

p. 00037

00036

01: A. I have.  
02: Q. Okay. This is a document  
03: from Anita Ducca to you dated October 31,  
04: 2016. Agreed?  
05: A. Yes.  
06: Q. Okay. Who is Anita Ducca?  
07: A. Anita Ducca is the senior  
08: vice president of regulatory affairs for  
09: Healthcare Distribution Alliance.  
10: Q. She reports to you?  
11: A. She does.  
12: Q. How long have you been with  
13: the HDA?  
14: A. I joined in January of 2011.  
15: Q. The HDA is an organization  
16: that acts on behalf of its members,  
17: correct?  
18: A. That's correct.  
19: Q. Your members include the,  
20: what we refer to in the case as the big  
21: three distributors, Cardinal Health,  
22: AmerisourceBergen, and McKesson; is that  
23: correct?  
24: A. In addition to -- in

00038

01: affiliate member category.  
02: Q. Teva?  
03: A. I believe so.  
04: Q. Endo?  
05: A. I believe so.  
06: Q. Okay. The HDA doesn't act  
07: on it -- on its own, it acts in the  
08: interest of its members and on behalf of  
09: its members, correct?  
10: MR. WEINSTEIN: Objection.  
11: Objection to form.  
12: Go ahead. You've just got  
13: to give me a moment to object.  
14: THE WITNESS: Sorry, I'm  
15: sorry, I apologize.  
16: We act on behalf of our core  
17: members which are the distributor  
18: members.  
19: BY MR. PIFKO:  
20: Q. Okay. You have a board,  
21: correct?  
22: A. We do.  
23: Q. The board membership always  
24: includes members from the big three,

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00039

01: AmerisourceBergen, McKesson, and Cardinal  
02: Health, correct?  
03: A. In addition to the 29 other  
04: members, yes.  
05: Q. Okay. But the board always  
06: has somebody from those companies on it?  
07: A. That's correct.  
08: Q. And then there's an  
09: executive committee as well, correct?  
10: A. That is correct.  
11: Q. And what's the makeup of the  
12: executive committee?

13: A. The --

14: MR. WEINSTEIN: Objection to  
15: form.

16: THE WITNESS: The executive  
17: committee is seven members, three  
18: members from the big three,  
19: AmerisourceBergen, McKesson, and  
20: Cardinal have a standing position  
21: on the executive committee.  
22: And then there are four  
23: other positions that are other  
24: member companies that filter

00041

01: without approval from its executive  
02: committee or the board, correct?  
03: MR. WEINSTEIN: Objection to  
04: form.  
05: THE WITNESS: Again, it  
06: depends on the scope of the  
07: program. If there's a significant  
08: cost or expenditure required, then  
09: that would usually rise to the  
10: level of the board. Or the  
11: executive committee.

12: BY MR. PIFKO:

13: Q. The -- the HDA is not going  
14: to communicate with a government agency  
15: like the DEA without approval from the  
16: executive committee or the board,  
17: correct?  
18: MR. WEINSTEIN: Objection to  
19: form.  
20: THE WITNESS: And again, it  
21: depends on the level of  
22: communication. If it's just a  
23: follow-up from a call or a  
24: response to a request for

p. 00039

p. 00041

00040

01: through kind of as -- as positions  
02: become available, retirement, and  
03: companies move on.  
04: BY MR. PIFKO:  
05: Q. The HDA doesn't take any  
06: action without the approval of either the  
07: executive committee or its board,  
08: correct?  
09: MR. WEINSTEIN: Objection to  
10: form.  
11: THE WITNESS: Again, it  
12: depends -- it depends on what you  
13: mean by action. I mean, there are  
14: certain things that rise to the  
15: level of the board that require  
16: their approval of expenditures, et  
17: cetera. But there are day-to-day  
18: operations that do not require  
19: approval of the board that we  
20: undertake on behalf of the  
21: membership.  
22: BY MR. PIFKO:  
23: Q. Okay. The HDA is not going  
24: to undertake any project or program

00042

01: information, that will not  
02: necessarily rise to the level of  
03: the board approval and engagement.  
04: BY MR. PIFKO:  
05: Q. Okay. But if you're going  
06: to launch some sort of detailed  
07: questioning or initiative that requires  
08: communication with the DEA, you're going  
09: to need executive committee approval or  
10: board approval, correct?  
11: MR. WEINSTEIN: Objection to  
12: form.  
13: THE WITNESS: Again, it  
14: depends on the level of -- of  
15: interaction with the DEA.  
16: BY MR. PIFKO:  
17: Q. How about engaging with  
18: members of Congress, is HDA going to  
19: reach out to members of Congress without  
20: approval from the board or the executive  
21: committee?  
22: MR. WEINSTEIN: Objection to  
23: form.  
24: THE WITNESS: We engage

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01: with, I mean, members of Congress  
02: on a weekly basis through a  
03: variety of fronts depending on  
04: committee hearings or fundraisers  
05: that we attend from our political  
06: action committee.  
07: And again, all of those  
08: are -- we communicate those to the  
09: board, but they are not decisions  
10: that need to be made by the board  
11: before HDA staff engage.  
12: BY MR. PIFKO:  
13: Q. Okay. So then that was  
14: going to be my other question. When you  
15: do communicate and interact with federal  
16: agencies or state agencies or members of  
17: Congress or any elected officials, you  
18: always report back to either the board or  
19: the executive committee, correct?  
20: MR. WEINSTEIN: Objection to  
21: form.  
22: THE WITNESS: If it's -- if  
23: it's relevant for board  
24: consideration, yes.

00045

01: Q. The -- what follows after  
02: the cover e-mail, this chronology, this  
03: is accurate to the best of your  
04: knowledge?  
05: A. To the best of my knowledge,  
06: yes. Some of it does take place before I  
07: joined the organization.  
08: Q. But you're familiar with  
09: these events?  
10: A. I am.  
11: Q. Okay. And in connection  
12: with providing testimony today, you've  
13: made yourself familiar with all these  
14: events, correct?  
15: A. Yes.  
16: Q. Okay. We're going to be  
17: talking about several of these, starting,  
18: as I talked about with Topic 4, the  
19: industry compliance guidelines. You're  
20: familiar with those?  
21: A. I am.  
22: Q. And you're familiar with the  
23: history of those?  
24: A. Yes.

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00044

01: BY MR. PIFKO:  
02: Q. Or the executive committee?  
03: A. Or the executive committee.  
04: Q. So going back to Exhibit 2.  
05: You -- Ms. Ducca says that "per your  
06: request, attached is a chronology of  
07: interactions with the DEA."  
08: Do you see that?  
09: A. I do.  
10: Q. You requested that she put  
11: together a chronology of HDA/DEA  
12: interactions in 2016?  
13: A. I don't know that I  
14: requested that she put it together. I  
15: know that she had been basically  
16: compiling the interactions.  
17: Q. Okay. So she had been  
18: compiling them contemporaneously with as  
19: they occurred?  
20: A. Right.  
21: Q. And then you asked her at  
22: this point for a copy of what she had  
23: prepared?  
24: A. Yes.

00046

01: Q. I want to ask you about a  
02: couple items on the timeline on the first  
03: page here, on HDA\_MDL\_00081364. Are you  
04: there?  
05: A. I am.  
06: Q. Okay. So it says,  
07: "Approximately 2005, DEA begins wholesale  
08: distributor meetings."  
09: Do you see that?  
10: A. I do.  
11: Q. Okay. And then it's got  
12: three other dates on the next entry. It  
13: says, "DEA sends letters on quote  
14: 'responsibilities of controlled  
15: substances distributors' for reporting  
16: and preventing diversion to  
17: distributors."  
18: Do you see that?  
19: A. I do.  
20: Q. Those are what we refer to  
21: as the Rannazzisi letters. Is that a  
22: term that you're familiar with?  
23: A. Yes.  
24: Q. Okay. Do you know who

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00047

01: Mr. Rannazzisi is?  
02: A. I do.  
03: Q. And who was he?  
04: A. He at the time was the head  
05: of the office of diversion control at the  
06: Drug Enforcement Administration.  
07: Q. And these are letters that  
08: the DEA sent out, executed by  
09: Mr. Rannazzisi, informing distributors  
10: and members of the pharmaceutical  
11: industry of their responsibilities with  
12: respect to controlled substances  
13: distribution, correct?  
14: MR. WEINSTEIN: Objection to  
15: form.  
16: THE WITNESS: That's  
17: correct.  
18: BY MR. PIFKO:  
19: Q. Okay. Then you have a,  
20: "2007, DEA suspends several wholesale  
21: distributor licenses."  
22: Do you see that?  
23: A. I do.  
24: Q. Okay. I know one of those

00049

01: of, yes.  
02: BY MR. PIFKO:  
03: Q. Okay. Go to the second page  
04: of the chronology, are you there?  
05: A. I am.  
06: Q. Okay. It says, "Spring  
07: 2010, press reports of another wholesale  
08: distributor registration suspension."  
09: Do you see that?  
10: A. I do.  
11: Q. Do you know who -- whose  
12: registration was suspended in the spring  
13: of 2010?  
14: A. I do not.  
15: Q. But you know some wholesale  
16: distributor's registration was  
17: suspended --  
18: A. According --  
19: Q. -- at that time?  
20: A. According to this  
21: chronology, yes.  
22: Q. Okay. And you believe this  
23: chronology is true and correct?  
24: A. To the best of my knowledge,

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00048

01: was AmerisourceBergen, who entered into a  
02: consent order on June 22nd, 2007. Are  
03: you -- do you -- are you aware of that?  
04: MS. ROLLINS: Objection to  
05: form.  
06: THE WITNESS: I'm aware in  
07: general terms, yes.  
08: BY MR. PIFKO:  
09: Q. Okay. Are you aware of  
10: other distributors who had their licenses  
11: suspended in 2007.  
12: MR. CRAWFORD: Objection to  
13: form.  
14: THE WITNESS: Not  
15: specifically.  
16: BY MR. PIFKO:  
17: Q. So to your knowledge, that's  
18: the only one?  
19: MR. WEINSTEIN: Objection to  
20: form.  
21: BY MR. PIFKO:  
22: Q. The AmerisourceBergen one?  
23: MR. WEINSTEIN: Objection.  
24: THE WITNESS: That I'm aware

00050

01: yes.  
02: Q. I'm handing you what's been  
03: marked as Exhibit 3.  
04: (Document marked for  
05: identification as Exhibit  
06: HDA-Kelly-3.)  
07: BY MR. PIFKO:  
08: Q. It's an e-mail from Pam  
09: Ritter at the HDA dated Wednesday, May  
10: 30th, 2007, to a whole host members of  
11: the pharmaceutical industry. It's  
12: Bates-labeled HSI\_MDL\_00620224 through  
13: 228.  
14: MR. WEINSTEIN: You can  
15: take -- take a moment.  
16: BY MR. PIFKO:  
17: Q. Take a moment to review that  
18: and let me know when you're ready.  
19: Do you know who Pam Ritter  
20: is?  
21: A. Yes.  
22: Q. Who is Pam Ritter?  
23: A. Pam Ritter was the  
24: administrative assistant for the

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00051

01: department -- the government affairs  
02: department at HDA.  
03: Q. Okay. What's the government  
04: affairs department?  
05: A. The government affairs  
06: department is the department that I run  
07: within the organization. It is the  
08: department that houses our regulatory  
09: affairs, federal government affairs, and  
10: state government affairs teams.  
11: Q. And Pam Ritter stills work  
12: at the HDA?  
13: A. She is no longer employed at  
14: the HDA.  
15: Q. Okay. When did she leave?  
16: A. She retired at the end of  
17: 2018.  
18: Q. So have you -- you're  
19: obviously are familiar with something  
20: called the regulatory affairs committee?  
21: A. I am, yes.  
22: Q. That's a committee that's  
23: within your purview?  
24: A. Yes, it is.

00053

01: A. I see it.  
02: Q. Okay. And it's asking for a  
03: telephone call to be held.  
04: A. Yes.  
05: Q. Do you see that?  
06: A. I do.  
07: Q. Okay. And it says the  
08: purpose of the call is -- I'm going to  
09: quote here, it says, "At the May 17th --  
10: which is 2007. "At the May 17th  
11: executive committee, there was a  
12: discussion about recent DEA activities to  
13: involve wholesale distributors in efforts  
14: to prevent diversion."  
15: Do you see that?  
16: A. I do.  
17: Q. Did I read that correctly?  
18: A. Yes.  
19: Q. Okay. And as a result of  
20: what HDA is calling recent DEA activities  
21: to involve wholesale distributors in  
22: efforts to prevent diversion, the  
23: executive committee requested that HDA  
24: become involved and come up with some

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00052

01: Q. Okay. That -- that includes  
02: some subset of members?  
03: A. Yes, it does.  
04: Q. Okay. But that -- at all  
05: times, that includes AmerisourceBergen,  
06: McKesson and Cardinal Health, correct?  
07: A. If they are able to  
08: participate, yes.  
09: Q. Okay. But they're standing  
10: members of that committee?  
11: A. They -- yeah, as are the  
12: rest of the members of the association,  
13: yes.  
14: Q. Okay. How about  
15: manufacturers? Are manufacturers --  
16: A. No.  
17: Q. -- part of that committee?  
18: A. No.  
19: Q. So there's a thread of  
20: e-mails here, but it goes back to one  
21: dated May 25th, 2007.  
22: Do you see that?  
23: It's sent by Ms. Ritter, but  
24: the signature on it is from Anita.

00054

01: strategies to interact with DEA, correct?  
02: A. Yes.  
03: Q. Okay. And so it says, "In  
04: consultation with our outside counsel, we  
05: are looking at covering the following  
06: points at such a DEA meeting."  
07: Do you see that?  
08: A. I do.  
09: Q. Okay. It's got Items 1, 2,  
10: 3.  
11: "One, give the DEA an  
12: overview of our industry; two, discuss  
13: limitations of the industry." And three,  
14: which is in bold, it says, "Provide  
15: specific suggestions for efforts that  
16: HDMA might offer to work on with the DEA  
17: as a means to show good faith and also to  
18: direct them to solutions that are  
19: feasible for distributors."  
20: Do you see that?  
21: A. I do.  
22: Q. And then it says that,  
23: during this call that is being requested  
24: to be held in early June, it says, "We

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00055

01: particularly wish to focus on the third  
02: item during this planned conference  
03: call."  
04: Do you see that?  
05: A. I do.  
06: Q. Do you agree with that?  
07: MR. WEINSTEIN: Objection to  
08: form.  
09: THE WITNESS: I agree that's  
10: what it says.  
11: BY MR. PIFKO:  
12: Q. That was a focus of this  
13: call that was going to be held in June?  
14: A. I think so. I'll take it at  
15: face value. This was when I was not in  
16: the organization. But, yes.  
17: Q. Okay. But you are a  
18: 30(b)(6) representative for HDA, correct?  
19: A. I am. I am. Yes, correct.  
20: Q. Okay. And then at the  
21: bottom here, it says, "I have attached a  
22: draft list of possible suggestions."  
23: Do you see that?  
24: A. I do.

00057

01: Do you see that?  
02: A. I do.  
03: Q. And then it's got some  
04: sub-bullet points. Again, it talks  
05: about -- it says, "A set of guidelines  
06: similar to the HDMA, guidelines for  
07: distribution system integrity that would  
08: be used to evaluate potential pharmacy  
09: customers before entering into agreements  
10: to sell controlled substances to them."  
11: Do you see that?  
12: A. I do.  
13: Q. Did I read that correctly?  
14: A. Yes.  
15: Q. Okay. So, these are things  
16: that the HDA was considering in response  
17: to what -- what she says on the prior  
18: page, "This recent DEA activities to  
19: involve wholesale distributors in efforts  
20: to prevent diversion," correct?  
21: A. Yes.  
22: Q. The third one she says is,  
23: "As an extreme step, are the controlled  
24: substances good candidates for a

p. 00055

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00056

01: Q. Okay. And then if we can --  
02: if we turn the page. We see something  
03: headed "Not For External Distribution,  
04: Potential Areas For Joint DEA  
05: Distribution Industry Focus to Help  
06: Prevent Diversion."  
07: Do you see that?  
08: A. On which?  
09: Q. It's the fourth page in.  
10: A. Titled "Not For External  
11: Distribution"?  
12: Q. Yes. Are you there?  
13: A. Yeah, yeah, yeah. I was --  
14: okay. I was reading. Okay. I see it.  
15: Q. Okay. And it says -- so  
16: this is the attachment from Ms. Ducca  
17: where she says, "I have attached a draft  
18: list of possible suggestions." This is  
19: that list.  
20: A. Right. I see it.  
21: Q. Okay. So Number 1 is,  
22: "Suggest that the distribution industry  
23: work together with DEA to establish  
24: guide" -- "better guidelines."

00058

01: restricted distribution program? The  
02: iPledge program is an example. Although  
03: no one is very enthusiastic about such  
04: programs, it might be a better  
05: alternative than DEA's current efforts.  
06: In such a program, pharmacies and  
07: prescribers would presumably have to make  
08: commitments about their practices and  
09: keep specific records, and distributors  
10: could not sell to anyone who did not keep  
11: these commitments."  
12: Do you see that?  
13: A. I do.  
14: Q. So that's an option that was  
15: being considered at this time, correct?  
16: A. Yes.  
17: Q. Taking stronger compliance  
18: measures is not one of the topics on  
19: here, correct?  
20: MR. WEINSTEIN: Objection to  
21: form.  
22: THE WITNESS: Not on this  
23: page, no.  
24: BY MR. PIFKO:

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00059

01: Q. Do you know if that was  
02: something that was discussed with the  
03: membership at the time?  
04: MR. WEINSTEIN: Objection to  
05: form.  
06: THE WITNESS: I do not.  
07: BY MR. PIFKO:  
08: Q. So to your knowledge, taking  
09: stronger compliance measures was not  
10: something that was in consideration in  
11: response to this DEA activities, correct?  
12: MR. WEINSTEIN: Objection to  
13: form.  
14: THE WITNESS: Again, I don't  
15: know what was discussed, whether  
16: that was discussed or not. It's  
17: not on this document.  
18: BY MR. PIFKO:  
19: Q. Okay. I'm handing you  
20: what's marked as Exhibit 4.  
21: (Document marked for  
22: identification as Exhibit  
23: HDA-Kelly-4.)  
24: BY MR. PIFKO:

00061

01: bottom of her -- Anita Ducca's e-mail,  
02: dated September 25, 2007.  
03: Do you see that?  
04: A. I do.  
05: Q. Okay. She says, "Dear HDMA  
06: committee members." So, the HDMA  
07: committee members, that includes all  
08: members?  
09: MR. WEINSTEIN: Objection to  
10: form.  
11: THE WITNESS: In this  
12: instance it appears to be the  
13: regulatory affairs committee and  
14: the federal government affairs  
15: committee.  
16: BY MR. PIFKO:  
17: Q. And it's cc'd to the  
18: government public policy committee as  
19: well?  
20: A. Government public policy  
21: council.  
22: Q. Oh, council. Okay.  
23: Those all include  
24: representatives from all the HDA

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p. 00061

00060

01: Q. This is another e-mail from  
02: Ms. Ducca. The subject is HDMA DEA  
03: strategy meeting, availability response  
04: requested on alternative dates. It's  
05: dated September 26, 2007. And it's got  
06: another e-mail below also from Ms. Ducca  
07: dated September 25, 2007.  
08: MS. WICHT: Can you just  
09: hold on until we have the  
10: document --  
11: MR. PIFKO: Yeah, no  
12: problem. I was just going to -- I  
13: was going to read the Bates label.  
14: Bates label is  
15: CAH\_MDL\_PRIORPROD DEA07\_00877471  
16: through 473.  
17: BY MR. PIFKO:  
18: Q. So take a minute to review  
19: it and let me know when you're ready.  
20: A. Okay.  
21: Q. All right. So on the first  
22: page here again it's talking about  
23: setting up some -- some meetings.  
24: On the first page at the

00062

01: distributor members?  
02: A. That participate in those  
03: committees, yes.  
04: Q. Okay. And again, that --  
05: those include members from the big three  
06: distributors, correct?  
07: A. Yes.  
08: Q. So she says here, "Given the  
09: intensity and impact of the Drug  
10: Enforcement Administration's recent  
11: actions, and the concerns expressed by  
12: HDMA's executive committee last week,  
13: HDMA recommends developing a  
14: comprehensive DEA strategy."  
15: Do you see that?  
16: A. I do.  
17: Q. So at this time, the HDA on  
18: behalf of its members was developing a  
19: comprehensive DEA strategy as a result of  
20: what they understood to be an -- intense  
21: actions from the DEA; is that correct?  
22: MR. WEINSTEIN: Objection to  
23: form.  
24: THE WITNESS: Yes, that is

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00063

01: correct.  
02: BY MR. PIFKO:  
03: Q. And then if you go to the  
04: second page of the document, she outlines  
05: some of the topics of discussions.  
06: Do you see that?  
07: A. I do.  
08: Q. Okay. So she says, "Our  
09: initial thoughts are" -- I'm on the  
10: second paragraph at the top there. Are  
11: you with me?  
12: A. Yes, I am.  
13: Q. She says, "Our initial  
14: thoughts are to review the major DEA  
15: issues."  
16: Do you see that?  
17: A. I do.  
18: Q. And then she has in  
19: parentheses what those issues are, right?  
20: A. Yes.  
21: Q. And one of them is  
22: suspicious orders, correct?  
23: A. Yes.  
24: Q. And then she says, she wants

00065

01: alternatives we can propose to DEA, or  
02: specific objections we should raise?  
03: What supporting information exists? Can  
04: we develop a strategy for DEA's concerns?  
05: Who should be involved?"  
06: Do you see that?  
07: A. Yes.  
08: Q. So, again, there was a  
09: discussion within the HDMA and its  
10: members at this time about a strategy for  
11: communicating with DEA, correct?  
12: A. Yes.  
13: Q. Another -- the  
14: second-to-last bullet point, she has  
15: here, she says, "What, if any, legal  
16: options do we have to address all of the  
17: above?"  
18: Do you see that?  
19: A. I do.  
20: Q. So in addition to a DEA  
21: strategy, HDMA and its members at this  
22: time were also evaluating legal options  
23: they might have to address these issues,  
24: correct?

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p. 00065

00064

01: to develop a specific policy and  
02: positions and supporting information for  
03: those issues.  
04: Do you see that?  
05: A. Yes.  
06: Q. As well as an overall  
07: strategy for identifying solutions.  
08: Do you see that?  
09: A. I do.  
10: Q. "We would also  
11: comprehensively assess HDMA's role in  
12: future DEA interactions."  
13: Do you see that?  
14: A. I do.  
15: Q. I said that correctly?  
16: A. Yes, you did.  
17: Q. Okay. So then she says,  
18: "Specific topics could include." And  
19: there are several bullet points here.  
20: Do you see that?  
21: A. I do.  
22: Q. So she says, "For suspicious  
23: orders," she says, are -- I'm reading the  
24: second bullet point. "Are there

00066

01: MR. WEINSTEIN: Objection to  
02: form.  
03: THE WITNESS: According to  
04: this, yes.  
05: BY MR. PIFKO:  
06: Q. You don't have any reason to  
07: dispute the accuracy of this?  
08: A. I don't.  
09: (Document marked for  
10: identification as Exhibit  
11: HDA-Kelly-5.)  
12: BY MR. PIFKO:  
13: Q. I'm handing you what's  
14: marked as Exhibit 5. It is a single-page  
15: e-mail. It's Bates-labeled  
16: HDA\_MDL\_000213427. Take a minute to  
17: review it and let me know when you're  
18: ready.  
19: A. Okay.  
20: Q. There's two e-mails in here,  
21: only really one of substance. The  
22: substantive e-mail is from John Gray  
23: to -- is it Paul Julian dated Tuesday,  
24: October 30th, 2007, and then John Gray

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00067

01: forwards that to Scott Melville.  
02: Do you see that?  
03: A. I do.  
04: Q. And the subject is HDMA  
05: board meeting.  
06: Do you see that?  
07: A. Yes.  
08: Q. Okay. Who's John Gray?  
09: A. John Gray is the president  
10: and CEO of HDA.  
11: Q. To your knowledge, how long  
12: has he been in that role?  
13: A. Since 2004 I believe, maybe  
14: '3.  
15: Q. So at this time, he was  
16: president and CEO of HDA?  
17: A. HDMA at the time, yes.  
18: Q. Okay. And do you know who  
19: Paul Julian is?  
20: A. Paul Julian was the board  
21: member that was tasked to basically  
22: represent McKesson on the HDA Board of  
23: Directors.  
24: Q. Okay. And then John Gray

00069

01: the recent surge in DEA enforcement  
02: around suspicious orders and methadone  
03: was moved to the top of the HDMA priority  
04: list."  
05: Do you see that?  
06: A. I do.  
07: Q. Do you agree that the DEA  
08: issue concerning what they call -- he  
09: calls a recent surge in enforcement  
10: around suspicious order was a top  
11: priority of the HDMA at the time?  
12: A. I do.  
13: Q. He says, "The board wants  
14: the association" -- that means the HDA,  
15: correct?  
16: A. Yes.  
17: Q. -- "to quickly develop a  
18: plan to deal with and work with the DEA  
19: as necessary."  
20: Do you see that?  
21: A. I do.  
22: Q. So there was discussions to  
23: develop a plan to deal with the DEA at  
24: this time, correct?

p. 00067

p. 00069

00068

01: forwards this exchange to Scott Melville.  
02: Do you see that?  
03: A. I do.  
04: Q. Do you know who Scott  
05: Melville is?  
06: A. I do.  
07: Q. Who is he?  
08: A. Scott Melville was the  
09: former head of the government affairs  
10: department at HDA.  
11: Q. Is Scott Melville still  
12: there?  
13: A. He is not.  
14: Q. So did you take over his  
15: position?  
16: A. I did.  
17: Q. And Anita Ducca reported to  
18: him at this time?  
19: A. She did.  
20: Q. So John Gray writes to Paul.  
21: He says, among other things, if you are  
22: -- are you there?  
23: A. I am.  
24: Q. "The DEA issue concerning

00070

01: A. Yes.  
02: Q. In response to this recent  
03: surge in enforcement around suspicious  
04: orders, correct?  
05: A. Yes.  
06: Q. Then he says, "Our first  
07: step will be to assemble a legal task  
08: force of member company attorneys  
09: (inhouse or outside counsel) to meet with  
10: our staff and discuss a course of action  
11: with the DEA."  
12: Do you see that?  
13: A. I do.  
14: Q. Then he says, "Is there  
15: someone within your McKesson legal team  
16: that could participate on this task  
17: force?"  
18: Do you see that?  
19: A. I do.  
20: Q. Are you aware of whether  
21: such a task force was in fact formed?  
22: A. Not specifically. I know  
23: there were subsequent groups that were  
24: formed, but I don't know if there was a

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p. 00070

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00071

01: legal task force. In fact, I'm not aware  
02: of a legal task force that was formed  
03: specifically for this purpose.  
04: Q. Okay. Are you aware that  
05: either inhouse or outside counsel from  
06: HDMA's distributor members participated  
07: in discussions about this surge in DEA  
08: enforcement around suspicious orders?  
09: MR. WEINSTEIN: Objection to  
10: form.  
11: THE WITNESS: Not specific  
12: meetings.  
13: BY MR. PIFKO:  
14: Q. But you don't have any  
15: reason to disagree with this?  
16: MR. WEINSTEIN: Objection to  
17: form.  
18: THE WITNESS: I don't.  
19: BY MR. PIFKO:  
20: Q. Did Anita Ducca tell you  
21: that there was no such group?  
22: MR. WEINSTEIN: Objection to  
23: form.  
24: THE WITNESS: She did not.

00073

01: and let me know when you're ready.  
02: You're of course free to  
03: review as much of the document as you see  
04: fit, but I'm only going to ask you about  
05: a couple pages of it.  
06: A. Okay.  
07: Q. Are you familiar with the  
08: format of these slides? Is that the HDMA  
09: logo on the bottom?  
10: MR. WEINSTEIN: Objection to  
11: form.  
12: THE WITNESS: I -- I am --  
13: yes, that is a common slide format  
14: that we have used.  
15: BY MR. PIFKO:  
16: Q. And when you have these  
17: conference calls, sometimes they have  
18: webinars or you share the PowerPoint  
19: presentations with people and you go  
20: through them when you have a call?  
21: A. Sometimes.  
22: Q. Okay. This is the kind of  
23: PowerPoint that you might share with your  
24: members during a call?

p. 00071

p. 00073

00072

01: BY MR. PIFKO:  
02: Q. Is Anita Ducca the person  
03: who would know for sure whether such a  
04: group was formed?  
05: MR. WEINSTEIN: Objection to  
06: form.  
07: THE WITNESS: I can't say  
08: for certain whether she would know  
09: or not.  
10: (Document marked for  
11: identification as Exhibit  
12: HDA-Kelly-6.)  
13: BY MR. PIFKO:  
14: Q. I'm handing you what's been  
15: marked as Exhibit 6. Exhibit 6 is a  
16: PowerPoint presentation Bates-labeled  
17: HDA\_MDL\_000143030 through 043 or 143043.  
18: According to the metadata,  
19: which is attached on the first page of  
20: this document, it was last modified  
21: December 10th, 2007, and the file name  
22: was slide for -- "Slides for Packaging  
23: Call, 12/10/2007."  
24: Take a minute to review this

00074

01: MR. WEINSTEIN: Objection to  
02: form.  
03: THE WITNESS: It could be.  
04: I don't know if this specific  
05: PowerPoint was shared with members  
06: or not. In fact, I'm not even  
07: sure who the author is. I can't  
08: imagine --  
09: BY MR. PIFKO:  
10: Q. That was going to my -- be  
11: my next question. Do you know who  
12: K. Baskette is?  
13: A. I do not.  
14: Q. This was produced by HDMA,  
15: do you have any reason to dispute the  
16: authenticity of this document?  
17: A. I do not.  
18: Q. The first slide here says,  
19: "Tomorrow's Outcome?"  
20: Do you see that?  
21: A. Yes.  
22: Q. "What are the impacts on our  
23: members?"  
24: Do you see that?

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00075

01: A. I do.  
02: Q. "Can we identify common  
03: themes and problems?"  
04: Do you see that?  
05: A. I do.  
06: Q. And then it says, "Should  
07: we," and it's got some bullet points.  
08: Do you see that?  
09: A. Yes.  
10: Q. One of them is, "Challenge  
11: the DEA."  
12: Do you see that?  
13: A. Yes.  
14: Q. At this time in late 2007 in  
15: response to this surge in enforcement  
16: activity, one of the strategies HDMA and  
17: its members were considering was to  
18: challenge the DEA, correct?  
19: MR. WEINSTEIN: Objection to  
20: form.  
21: THE WITNESS: Yes.  
22: BY MR. PIFKO:  
23: Q. It says on the next page,  
24: "DEA will be here to describe their

00077

01: Do you see that?  
02: A. Yes. That's what it says,  
03: yes.  
04: Q. Turn to the third page of  
05: the document, of the -- the slides. So  
06: it's technically the fourth page of the  
07: document. "Suspicious orders - policy  
08: questions" is the heading of the slide.  
09: Do you see that?  
10: A. I do.  
11: Q. Halfway down the slide it  
12: says, "Should we support DEA's efforts?"  
13: Do you see that?  
14: A. Yes.  
15: Q. So there are some questions  
16: about whether HDMA and its members were  
17: going to support DEA's efforts, correct?  
18: A. Yes.  
19: MS. MACKAY: Object to form.  
20: MR. WEINSTEIN: Objection to  
21: form. Just got to give a second  
22: after the question.  
23: THE WITNESS: Oh, I'm sorry.  
24: BY MR. PIFKO:

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00076

01: expectations."  
02: Do you see that?  
03: A. I do.  
04: Q. And it -- it gives some  
05: examples of what HDA understands their  
06: expectations to be at this time.  
07: Do you see that?  
08: A. Yes.  
09: Q. "Know your customer better,"  
10: correct?  
11: A. That's what it says.  
12: Q. "Have processes/controls in  
13: place to detect suspicious orders,"  
14: correct?  
15: A. Yes.  
16: Q. "Stop 'suspicious' order  
17: sales" -- underlined -- "before  
18: shipment."  
19: Do you see that?  
20: A. Yes.  
21: Q. That's correct?  
22: A. Yes.  
23: Q. "Less interested in reports  
24: after shipment."

00078

01: Q. One of the bullet points is,  
02: "Develop business practices," which is --  
03: business practices is in quote.  
04: Do you see that?  
05: A. I do.  
06: Q. Do you now understand what  
07: that refers to?  
08: A. I -- I think what it led to,  
09: yes.  
10: Q. The industry compliance  
11: guidelines, correct?  
12: A. Yes.  
13: Q. And then it says,  
14: "Alternatively do we want to challenge  
15: DEA's expectations?"  
16: Do you see that?  
17: A. Yes.  
18: Q. And that was something else  
19: HDMA and its members were considering at  
20: this time, correct?  
21: MS. MACKAY: Object to form.  
22: THE WITNESS: Again, I think  
23: there was a variety of  
24: considerations going on at the

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00079

01: time, yes.  
02: BY MR. PIFKO:  
03: Q. But this was one of them,  
04: correct?  
05: A. According to this, yes.  
06: Q. Again, it says, "What are  
07: our legal options?"  
08: Do you see that?  
09: A. I do.  
10: Q. So there were some  
11: evaluations of what legal strategies can  
12: be employed to challenge the DEA's  
13: expectations?  
14: MR. WEINSTEIN: Objection to  
15: form.  
16: THE WITNESS: Again, I think  
17: those considerations were being  
18: discussed.  
19: (Document marked for  
20: identification as Exhibit  
21: HDA-Kelly-7.)  
22: BY MR. PIFKO:  
23: Q. I'm handing you what's  
24: marked as Exhibit 7, it is a two-page

00081

01: BY MR. PIFKO:  
02: Q. Okay. So you agree it's  
03: roughly within that time frame?  
04: MR. WEINSTEIN: Objection to  
05: form.  
06: THE WITNESS: I'll agree  
07: that it was in that time frame.  
08: BY MR. PIFKO:  
09: Q. At the bottom of the first  
10: page of the letter, HDMA tells DEA, "Our  
11: objective is to find an effective process  
12: for the DEA and our members to achieve  
13: the common goals of reducing the  
14: potential for diversion in a less  
15: adversarial environment."  
16: Do you see that?  
17: A. I do.  
18: Q. That's what HDMA told DEA at  
19: this time, correct?  
20: A. It's in the letter that we  
21: sent to DEA, yes.  
22: (Document marked for  
23: identification as Exhibit  
24: HDA-Kelly-8.)

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00080

01: document. It's a letter on HDMA  
02: letterhead dated July 25, 2007, from  
03: Scott Melville. It's Bates-labeled  
04: CAH\_MDL2804\_02489197, through 198. Take  
05: a minute to review that and let me know  
06: when you're done.  
07: A. Okay.  
08: Q. So this is -- this letter  
09: Exhibit 7 is HDMA requesting a meeting  
10: with DEA to discuss suspicious orders,  
11: correct?  
12: A. Correct.  
13: Q. This is -- it's dated  
14: July 25, 2007. That's approximately a  
15: month after AmerisourceBergen entered --  
16: entered into a consent order with the  
17: DEA, correct?  
18: MS. ROLLINS: Objection to  
19: form.  
20: THE WITNESS: I'll take -- I  
21: don't know the specific date when  
22: that consent decree was entered  
23: into. I'm thinking it's in that  
24: time frame.

00082

01: BY MR. PIFKO:  
02: Q. I'm handing you a single  
03: page e-mail from Ms. Ducca marked as  
04: Exhibit 8. It's Bates-labeled  
05: CAH\_MDL2804\_012489160.  
06: It's from Ms. Ducca dated  
07: October 28, 2011, to Cardinal Health's  
08: Robert Giacalone.  
09: A. Giacalone.  
10: Q. Giacalone.  
11: Take a minute to review it,  
12: and I just have a couple questions about  
13: this.  
14: A. Okay.  
15: Q. So in it, Ms. Ducca is  
16: explaining the history of some of the  
17: negotiations and discussions regarding  
18: the industry compliance guidelines,  
19: correct?  
20: A. Yes.  
21: Q. Okay. And you could see  
22: from the e-mail there are several  
23: attachments, if you look on the header.  
24: A. I see that.

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00083

01: Q. Okay. And then she says,  
02: there's there -- there were three  
03: meetings with DEA on the ICG guidelines,  
04: one, April 15, 2008, one June 4, 2008,  
05: one in September 2008.  
06: Do you see that?  
07: A. I do.  
08: Q. And then she says she  
09: attached a summary of the first one.  
10: Do you see that?  
11: "I've included a summary of  
12: the first one."  
13: A. Yes, yes.  
14: Q. And then she says, "Labeled  
15: draft since I didn't want it to look  
16: final if it ever 'got out.'"  
17: Do you see that?  
18: A. I do.  
19: Q. And then she says, "Also,  
20: the second meeting consisted of DEA  
21: giving us verbal feedback on their review  
22: of the draft ICG that we gave them."  
23: Do you see that?  
24: A. I do.

00085

01: BY MR. PIFKO:  
02: Q. I'm going to hand you some  
03: of the attachments, starting with her  
04: summary of the September 7th, 2007,  
05: meeting with DEA. Exhibit 9.  
06: This is a two-page document,  
07: Exhibit 9, Bates-labeled  
08: CAH\_MDL2804\_02489199 through 200. Take a  
09: minute to review this. And let me know  
10: when you're done.  
11: A. Okay.  
12: Q. This was the meeting that  
13: was held in response to the request that  
14: HDA made on July 25th, 2007, correct?  
15: This is a summary of that meeting,  
16: correct?  
17: A. I believe so, yes.  
18: Q. Which is referred to in  
19: Exhibit 7, right? That's the letter.  
20: A. Yes.  
21: Q. Okay.  
22: MR. WEINSTEIN: It says  
23: July 25, 2008, on the record here.  
24: But it's 2007, just to be clear.

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p. 00085

00084

01: Q. "This is, therefore, a  
02: summary of that feedback."  
03: Do you see that?  
04: A. I do.  
05: Q. "Again, we never called it  
06: 'final' since I was more interested in  
07: finishing the ICG than in perfecting a  
08: summary."  
09: Do you see that?  
10: A. I do.  
11: Q. "For the third meeting I  
12: didn't do a summary," she says.  
13: Do you see that?  
14: A. I do.  
15: Q. And then she says, "Also  
16: included is a summary of a meeting HDMA  
17: had with DEA in September of '07 just to  
18: ask them what was going on with their  
19: meetings with distributors."  
20: Do you see that?  
21: A. I do.  
22: (Document marked for  
23: identification as Exhibit  
24: HDA-Kelly-9.)

00086

01: MR. PIFKO: Oh, I said that,  
02: okay.  
03: MR. WEINSTEIN: Yeah, yeah.  
04: BY MR. PIFKO:  
05: Q. So this meeting included,  
06: from HDMA, Scott Melville, Anita Ducca,  
07: and David Durkin, who's outside counsel  
08: for HDA, correct?  
09: A. Correct.  
10: Q. And DEA attendees included  
11: Mark Caverly, Cathy Gallagher, Mike  
12: Mapes, and Lisa Sullivan, correct?  
13: A. Correct.  
14: Q. So it's got different  
15: headings, summary, key takeaways,  
16: additional points DEA made included,  
17: conclusion, and then HDMA questions and  
18: assessment.  
19: Do you agree those are the  
20: headings she has?  
21: A. I agree.  
22: Q. In her summary section on  
23: the first page -- so one of the things  
24: that HDA requested in the July 25th,

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p. 00086

00087

01: 2007, letter, Exhibit 7, was to  
02: understand the -- what we called the  
03: distributor initiative. And there is  
04: some discussion here that Mike Mapes  
05: provided about that.  
06: Do you see that?

07: MR. WEINSTEIN: Objection to  
08: form.

09: THE WITNESS: Yes.

10: BY MR. PIFKO:

11: Q. Okay. So the summary that  
12: Ms. Ducca prepared says that, "Mr. Mapes  
13: noted that DEA had met with approximately  
14: 15 to 20 wholesale distributors one on  
15: one. They had prioritized who to meet  
16: with on a combination of wholesale  
17: distributor sales volume and tracing back  
18: to where they felt the source of products  
19: for illicit internet pharmacies were  
20: located."  
21: Do you see that?  
22: A. I do.  
23: Q. Do you have any reason to  
24: dispute that that's what DEA told HDMA

00089

01: distributor to 'know their customers'."  
02: Do you see that?  
03: A. I do.  
04: Q. Do you have an -- any reason  
05: to dispute that these were key takeaways  
06: from the meeting?  
07: A. I do not.  
08: Q. Then she has under her  
09: heading additional points DEA made  
10: included.  
11: Do you see that?  
12: A. Yes.  
13: Q. The second one says, "DEA  
14: provided examples of what a  
15: distributor" -- "a wholesale distributor  
16: should do to 'know their customers' and  
17: what to look for."  
18: Do you see that?  
19: A. I do.  
20: Q. Do you have any reason to  
21: dispute that DEA during this meeting  
22: provided examples of what distributors  
23: should do to know their customers?  
24: A. I do not.

p. 00087

p. 00089

00088

01: during this meeting?  
02: A. I do not.  
03: Q. Then she says, key takeaways  
04: from the meetings are -- from the meeting  
05: were, first bullet point, "DEA's policy  
06: was to expect more than just reporting  
07: suspicious orders."  
08: Do you see that?  
09: A. I do.  
10: Q. Second bullet point, "Simply  
11: complying with the 'suspicious orders'  
12: regulatory requirement does not mean, in  
13: the agency's view, that the registrant is  
14: making" -- "maintaining an effective  
15: program to detect and prevention  
16: diversion."  
17: Do you see that?  
18: A. I do.  
19: Q. Did I read that correctly?  
20: A. You did.  
21: Q. Third bullet point, "DEA  
22: indicated that they did not have the  
23: resources to inspect every pharmacy;  
24: therefore, it was important for the

00090

01: Q. Going to the second page,  
02: second-to-last bullet point at the top of  
03: that page, "DEA also indicated that they  
04: were not going to make a decision for the  
05: wholesale distributor as to when an order  
06: was suspicious."  
07: Do you see that?  
08: A. I do.  
09: Q. "They feel this is up to the  
10: distributor."  
11: Do you see that?  
12: A. I do.  
13: Q. Do you have any reason to  
14: dispute that this is what DEA told HDMA  
15: during this meeting?  
16: A. I do not.  
17: Q. Last bullet point. "DEA  
18: suggested that distributors should check  
19: on the pharmacies' prescribing  
20: physicians. They pointed to some states  
21: having online systems by which a  
22: distributor could check to see if a  
23: prescribing physician had a valid DEA  
24: registration. DEA suggested that

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01: distributors ask who the doctors are that  
02: are prescribing, where the pharmacy is  
03: geographically with respect to its  
04: prescribing doctors, and the patient  
05: population."  
06: Do you see that?  
07: A. I do.  
08: Q. Any reason to dispute that  
09: that's something that DEA told HDMA  
10: during this meeting?  
11: A. I do not.  
12: Q. And per the normal practice,  
13: HDMA would have communicated this  
14: information back to its members after the  
15: meeting occurred, correct?  
16: MR. WEINSTEIN: Objection to  
17: form.  
18: THE WITNESS: Correct.  
19: (Document marked for  
20: identification as Exhibit  
21: HDA-Kelly-10.)  
22: BY MR. PIFKO:  
23: Q. I'm handing you what's  
24: marked as Exhibit 10. For the record,

00093

01: suspicious orders, correct?  
02: A. Correct.  
03: Q. And ultimately HDMA and its  
04: members decided to move forward with that  
05: project, correct?  
06: A. Correct.  
07: Q. If you look back at  
08: Exhibit 9, in her summary, Ms. Ducca  
09: references that, she says that "DEA  
10: provided us with their latest  
11: organizational chart," on the first page.  
12: I don't know if you see that there. And  
13: explained the responsibilities of each  
14: section.  
15: A. Yes.  
16: Q. Okay. So going to  
17: Exhibit 10, this is -- Exhibit 10 is  
18: Ms. Ducca on Wednesday, January 2, 2008,  
19: sending to a consultant HDMA hired on  
20: behalf of its members to put together  
21: this best practices, some background  
22: information and a scope of work, correct?  
23: MR. WEINSTEIN: Objection to  
24: form.

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00092

01: it's a multiple-page document  
02: Bates-labeled HDA\_MDL\_000151104 through  
03: 151118. Take a minute to review  
04: Exhibit 10 and let me know when you're  
05: ready.  
06: MR. WEINSTEIN: I think I  
07: have the last Bates as 119, just  
08: for the record.  
09: MR. PIFKO: Oh, I did -- I  
10: skipped that. Sorry. I didn't  
11: see that was there. Yeah, so it  
12: goes through 119.  
13: THE WITNESS: Okay.  
14: BY MR. PIFKO:  
15: Q. Are you ready?  
16: A. Yes.  
17: Q. So as we discussed when we  
18: looked at Exhibit 3, in response to what  
19: HDMA told its members was a recent DEA  
20: activities to involve wholesale  
21: distributors in efforts to prevent  
22: diversion, HDMA and its members were  
23: discussing putting together some best  
24: practices or guidelines concerning

00094

01: THE WITNESS: Correct.  
02: BY MR. PIFKO:  
03: Q. The consultant, his name was  
04: Bill Wilson, correct?  
05: A. Yes.  
06: Q. She says, "Dear Bill, please  
07: find the information we discussed."  
08: Do you see that?  
09: A. I do.  
10: Q. "The last attachment  
11: contains" -- "contains the 'scope of  
12: work' for the project proposal."  
13: Do you see that?  
14: A. I do.  
15: Q. The second page of this  
16: document includes the -- this org chart  
17: which came from the meeting with DEA,  
18: correct?  
19: A. Yeah. I imagine so, yes.  
20: Q. And then if you turn a few  
21: more pages in. So Ms. Ducca is including  
22: some information that she says that --  
23: background that this consultant might  
24: need for his work, correct?

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00095

01: A. Correct.  
02: Q. One of them is a  
03: September 27, 2006, letter from  
04: Mr. Rannazzisi, correct?  
05: A. Correct.  
06: Q. There are several pages that  
07: are redacted. And then the last three  
08: pages are the scope of work for this  
09: consultant, correct?  
10: A. Yes.  
11: Q. On the first page of the  
12: scope of work, which is HDMA --  
13: HDA\_MDL\_000151117, she provides different  
14: headings.  
15: One of -- the number -- the  
16: second heading is "Objectives."  
17: Do you see that?  
18: A. I do.  
19: Q. Okay. And she says, "The  
20: purpose of this project is to support  
21: HDMA's efforts to aid its members in  
22: responding to the drug enforcement  
23: distributor initiative by preparing a  
24: 'model' set of suspicious order business

00097

01: Q. Okay.  
02: A. Stability and suitability of  
03: distributor's customers.  
04: Q. The second goal of this  
05: document is Letter B here, "Provide  
06: guidance to healthcare distributors on  
07: evaluating customer orders for controlled  
08: substances to indicate when orders are  
09: suspicious."  
10: Do you see that?  
11: A. I do.  
12: Q. That's correct?  
13: A. That's what it says.  
14: Q. And that's one of the goals  
15: of the final product?  
16: MR. WEINSTEIN: Objection to  
17: form.  
18: THE WITNESS: It is my  
19: understanding.  
20: BY MR. PIFKO:  
21: Q. The third one, Letter C, is,  
22: "Define criteria for use by HDMA members  
23: that would signal when a customer is  
24: placing a suspicious order and whether

p. 00095

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00096

01: practices."  
02: Do you see that?  
03: A. I do.  
04: Q. Do you agree that that was  
05: the scope of work for this project?  
06: A. I do at the time. Yes.  
07: Q. Okay. So, she says, "The  
08: final product will be a document  
09: containing the business practices in the  
10: form of a white paper that will" --  
11: Do you see that?  
12: A. I do.  
13: Q. And then she's got four  
14: letter points here.  
15: Do you see that?  
16: A. I do.  
17: Q. The first one I'm  
18: paraphrasing is for -- to serve as a  
19: guide for evaluating the suitability of  
20: distributor's customers.  
21: Do you see that?  
22: A. I do.  
23: Q. That's correct?  
24: A. Yes.

00098

01: there should be further evaluation."  
02: Do you see that?  
03: A. I do.  
04: MS. MACKAY: Object to form.  
05: BY MR. PIFKO:  
06: Q. That's correct, that was one  
07: of the goals of this white paper?  
08: A. That's what it states here.  
09: Q. Do you have any reason to  
10: dispute that was one of the goals?  
11: A. I do not.  
12: Q. Okay. And then the fourth  
13: one is, "Suggest criteria and mechanisms  
14: for healthcare distributors to design of  
15: a system to stop orders prior to  
16: shipment, if/when an order is determined  
17: to be suspicious."  
18: Do you see that?  
19: A. I do.  
20: Q. That was another goal of  
21: this model set of suspicious order  
22: business practices, correct?  
23: A. Again, that's what it says  
24: here, and I have no reason to dispute it.

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p. 00098

00099

01: Q. So going to the -- the  
02: second page of the scope of work.  
03: HDA\_MDL\_001511178. Are you there?  
04: A. I am.  
05: Q. The heading starts on the  
06: prior page, but she says, "Background  
07: information and research will include the  
08: following components."  
09: And then she's got letters A  
10: through E.  
11: Do you see that?  
12: A. I do.  
13: Q. Okay. So these are things  
14: that the consultant is supposed to do in  
15: order to put together these model set of  
16: suspicious order business practices,  
17: correct?  
18: A. Yes.  
19: Q. Okay. So one of them is to  
20: evaluate DEA regulations and guidance  
21: provided to healthcare distributors.  
22: Do you see that?  
23: A. I do.  
24: Q. This includes historic

00101

01: form.  
02: MS. MACKAY: Objection to  
03: form.  
04: THE WITNESS: It says where  
05: available, yes.  
06: BY MR. PIFKO:  
07: Q. And then it says,  
08: "Interviewing at least eight, as many as  
09: ten, HDMA member companies."  
10: Do you see that?  
11: A. I do.  
12: Q. And then it's got several  
13: bullet points about what the interviews  
14: are supposed to include.  
15: Do you see that?  
16: A. I do.  
17: Q. One of them is, "Identify  
18: preferences for content of such  
19: guidances."  
20: Do you see that?  
21: A. I do.  
22: Q. Another one is, "Define a  
23: mechanism for stopping shipments that are  
24: suspicious before they are released from

p. 00099

p. 00101

00100

01: information, the controlled substances  
02: manual, a report to the Department of  
03: Justice on suspicious orders for listed  
04: chemical handlers, and more recent DEA  
05: guidelines -- or guidance such as the  
06: 2006 Rannazzisi letter, Kyle Wright's  
07: presentation to the HDMA.  
08: Do you see that?  
09: A. Yes.  
10: Q. Okay. That was one of the  
11: things that this consultant was supposed  
12: to look at to prepare these, correct?  
13: A. Yes.  
14: Q. Another thing was, it says,  
15: "Obtaining where available copies of HDMA  
16: member companies' internal suspicious  
17: order business practices."  
18: Do you see that?  
19: A. I do.  
20: Q. So one of the things that  
21: this consultant was supposed to do was  
22: collect the suspicious order business  
23: practices from HDMA members, correct?  
24: MR. WEINSTEIN: Objection to

00102

01: a warehouse."  
02: Do you see that?  
03: A. I do.  
04: Q. "Identify information that  
05: is either nonessential, unsuitable or  
06: lacks flexibility to be applicable across  
07: HDMA's highly varied membership."  
08: Do you see that?  
09: A. I do.  
10: Q. Those were all things that  
11: the consultant was supposed to discuss in  
12: his interviews with the member companies?  
13: A. That's what this stipulates,  
14: yes.  
15: Q. Then another thing he was  
16: supposed to consider was, "Input from  
17: HDMA's outside counsel."  
18: Do you see that?  
19: A. I do.  
20: Q. It says, "HDMA's outside  
21: counsel is currently preparing  
22: information pertaining to suspicious  
23: order business practices."  
24: Do you see that?

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00103

01: A. Best practices, yes.  
02: Q. "The information being  
03: prepared is based on his experience with  
04: HDMA members and DEA expectations and it  
05: is anticipated will address some of the  
06: conditions that should be built into a  
07: set of suspicious order business  
08: practices."  
09: Do you see that?  
10: A. Yes.  
11: Q. So that's another thing this  
12: consultant was supposed to be  
13: considering?  
14: A. According to this, yes.  
15: Q. Any reason to dispute that?  
16: A. No.  
17: Q. Letter E is, "Review of  
18: previous HDMA guidelines and other  
19: HDMA-generated materials pertaining to  
20: suspicious orders and related compliance  
21: programs."  
22: Do you see that?  
23: A. I do.  
24: Q. You're aware that at this

00105

01: MR. WEINSTEIN: Objection to  
02: form.  
03: THE WITNESS: Correct.  
04: BY MR. PIFKO:  
05: Q. So then item 4, she has is,  
06: project steps, cost and timing. So the  
07: first step is designed to -- she wants  
08: the consultant to design the interview  
09: instrument.  
10: Do you see that?  
11: A. I do.  
12: Q. And then if we turn the  
13: page, the next step is contacting HDMA  
14: members to request copies of their  
15: current suspicious orders business  
16: practices.  
17: Do you see that?  
18: A. I do.  
19: Q. So we discussed this before.  
20: This was Item B as some of the documents  
21: that the consultant was supposed to use  
22: to develop these, correct?  
23: A. Yes.  
24: Q. And then she says, "HDMA can

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00104

01: time, HDMA had other guidelines for  
02: suspicious orders, correct?  
03: MR. WEINSTEIN: Objection to  
04: form.  
05: THE WITNESS: I don't know  
06: that there were other guidelines  
07: for suspicious orders.  
08: BY MR. PIFKO:  
09: Q. Okay. We'll get to that in  
10: a minute. Then it says underneath there,  
11: "To the extent possible, the final  
12: document should be designed in  
13: recognition of the highly varying nature  
14: of the wholesale distribution in terms of  
15: individual HDMA member size, customer  
16: base and needs, physician" -- "physical  
17: location, information technology, et  
18: cetera."  
19: Do you see that?  
20: A. I do.  
21: Q. So you understood that these  
22: guidelines were supposed to be adaptable  
23: so that they could be implemented by any  
24: of HDA's members, correct?

00106

01: facilitate this by sending an e-mail to  
02: our members making the request."  
03: Do you see that?  
04: A. I do.  
05: Q. So you understand that and  
06: agree that HDMA was going to request  
07: copies of its members' suspicious order  
08: business practices so that they could be  
09: used for this project, correct?  
10: MS. MACKAY: Objection to  
11: form.  
12: THE WITNESS: That's what I  
13: understand, yes.  
14: BY MR. PIFKO:  
15: Q. And then it says, "Identify  
16: an appropriate individual within the  
17: company with whom to conduct the  
18: interview as described in 3-C above."  
19: Do you see that?  
20: A. Yes, I do.  
21: Q. And then conduct the  
22: interview, right?  
23: A. Yes. I see that.  
24: Q. Okay. And so -- and then

p. 00104

p. 00106

00107

01: Item 3 was to then put pen to paper and  
02: draft the guidelines, correct?  
03: A. Item -- yes, Item 3, yes,  
04: prepare the draft.  
05: Q. And then she sets a deadline  
06: of January 30th so that HDMA staff  
07: committees and outside counsel can review  
08: them, correct?  
09: A. That's what it says, yes.  
10: Q. And then she says, "There  
11: may be some meetings with the government  
12: and public policy council which is  
13: scheduled for February 12th and 13th, and  
14: maybe he needs to participate in those  
15: meetings."  
16: Do you see that?  
17: A. I do.  
18: Q. And then there's going to  
19: be -- they are going to be discussing the  
20: draft and obtaining feedback from the  
21: committee, correct?  
22: A. That's what it says.  
23: Q. Then to the extent  
24: necessary, Items 5 and 6 talk about how

00109

01: CAH\_MDL2804\_02201910 through 1916.  
02: MR. WEINSTEIN: Is there a  
03: date on this document, Mark?  
04: MR. PIFKO: Not on this one.  
05: BY MR. PIFKO:  
06: Q. Take a minute to review this  
07: and let me know when you're done. Before  
08: you get mired in the details -- take as  
09: much time as you need -- I just want to  
10: confirm.  
11: So as we know from the other  
12: e-mails and discussion on this best  
13: practices guidelines issue, the HDA's  
14: predecessor had some sort of other  
15: suspicious order monitoring guidelines,  
16: correct?  
17: MR. WEINSTEIN: Objection to  
18: form.  
19: MR. PADGETT: Object to  
20: form.  
21: MS. WICHT: Object to the  
22: form.  
23: THE WITNESS: Again, I've  
24: not seen this before. But I will

p. 00107

p. 00109

00108

01: the consultant might need to make  
02: revisions to the draft, agree?  
03: A. Agree.  
04: MR. WEINSTEIN: Mark, is  
05: this a good time for a break?  
06: We've been going about an hour and  
07: a quarter.  
08: MR. PIFKO: Sure.  
09: THE VIDEOGRAPHER: The time  
10: is 10:10 a.m. We are going off  
11: the record.  
12: (Short break.)  
13: THE VIDEOGRAPHER: The time  
14: is 10:24 a.m. We are back on the  
15: record.  
16: (Document marked for  
17: identification as Exhibit  
18: HDA-Kelly-11.)  
19: BY MR. PIFKO:  
20: Q. I'm handing you what's  
21: marked as Exhibit 11. For the record,  
22: it's a document, a few pages long, with  
23: the heading "NWDA Suspicious Order  
24: Monitoring System." It's Bates-labeled

00110

01: take you at your word, yes.  
02: BY MR. PIFKO:  
03: Q. Well, she comments that one  
04: of the things in Exhibit 10 that he's  
05: supposed to review is the previous HDMA  
06: guidelines.  
07: Do you recall that?  
08: MR. WEINSTEIN: Where are  
09: you referring to, Mark?  
10: MR. PIFKO: On Exhibit 10,  
11: in the scope of work Section 3-E.  
12: For the record, that's on  
13: HDA\_MDL\_000151118.  
14: BY MR. PIFKO:  
15: Q. My question is, you agree  
16: there were previous guidelines. She  
17: makes reference to it in the scope of  
18: work here, correct?  
19: A. She did make -- I agree she  
20: did make a reference to it. And this is  
21: an example of those guidelines, I  
22: imagine. Yes.  
23: Q. To your knowledge, these are  
24: dated around the '80s?

p. 00108

p. 00110

00111

01: MR. WEINSTEIN: Objection to  
02: form.  
03: THE WITNESS: I have -- I  
04: have no idea when these are dated.  
05: BY MR. PIFKO:  
06: Q. Okay. Did you discuss  
07: these, or any prior HDA or its  
08: predecessor entity guidelines in  
09: preparing for depositions with anybody?  
10: A. I have not seen this  
11: document before.  
12: Q. Did you undertake any effort  
13: to familiarize yourself with HDA's prior  
14: suspicious order guidelines in connection  
15: with preparing for this deposition?  
16: A. Other than the ICGs, no,  
17: nothing.  
18: Q. NWDA is a predecessor name  
19: for HDA correct?  
20: A. That's correct.  
21: Q. National Wholesale  
22: Druggists' Association, correct?  
23: A. Correct.  
24: Q. Okay. Do you have any

00113

01: which will disclose to the wholesaler  
02: suspicious orders of controlled  
03: substances."  
04: Do you see that?  
05: A. I do.  
06: Q. Do you have an understanding  
07: that that is something that wholesale  
08: distributors are required to do?  
09: MR. WEINSTEIN: Objection to  
10: form.  
11: THE WITNESS: I do.  
12: BY MR. PIFKO:  
13: Q. Then it -- a little bit  
14: further down in that paragraph, it says,  
15: "The requirement is to monitor individual  
16: orders by measuring dosage units within  
17: each order and to examine for suspicious  
18: volumes. Special emphasis should be  
19: placed on unusual or sudden increases  
20: with the volume of invoice lines  
21: processed by the average wholesaler.  
22: This task becomes increasingly difficult  
23: as the number of products and dosage  
24: sizes increase."

p. 00111

p. 00113

00112

01: reason to dispute that these are  
02: guidelines put out on suspicious order  
03: monitoring, put out by the NWDA?  
04: MR. WEINSTEIN: Objection to  
05: form.  
06: THE WITNESS: I have no  
07: reason to dispute that.  
08: BY MR. PIFKO:  
09: Q. I want to direct your  
10: attention -- well --  
11: A. Can I read them?  
12: Q. Yeah. Sure I didn't know if  
13: you were ready. I was only going to ask  
14: you about a couple pages.  
15: A. Okay.  
16: Q. But take your time to look  
17: at it as much as you need.  
18: A. Okay.  
19: Q. You ready?  
20: A. I am.  
21: Q. All right. First page,  
22: Section 1, "Background." It says it's --  
23: "It is the responsibility of the  
24: wholesaler to design and operate a system

00114

01: Do you see that?  
02: A. I do.  
03: Q. Do you understand that this  
04: was foundational information for the  
05: NWA's -- NWDA's suspicious order  
06: monitoring system?  
07: MR. WEINSTEIN: Objection to  
08: form and foundation, and objection  
09: to scope.  
10: THE WITNESS: Again, I've --  
11: I've not seen this document  
12: before.  
13: BY MR. PIFKO:  
14: Q. Are you aware that your  
15: website currently states that the NWA was  
16: renamed the Healthcare Distribution  
17: Management Association in 2001?  
18: A. I am.  
19: Q. Okay. So if these are from  
20: the NWDA, they would have to be prior to  
21: that date for sure, correct?  
22: A. Yes.  
23: Q. It's got a Section 2,  
24: "Definition Of Suspicious Orders." It

p. 00112

p. 00114

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00115

01: says, "Suspicious orders include orders  
02: of unusual size, orders deviating  
03: substantially from a normal pattern, and  
04: orders of unusual frequency."  
05: Do you see that?  
06: A. Yes.  
07: Q. Is that consistent with what  
08: your understanding of what is stated in  
09: the regulations about the definition of  
10: suspicious order?  
11: A. That is all that is stated  
12: in -- in the regulations, yes.  
13: Q. I want to -- there's page  
14: numbers on the bottom of this document,  
15: Page 7, which is 02201916.  
16: Tell me when you're there.  
17: A. I'm there.  
18: Q. Okay. It says, "Single  
19: Suspicious Orders," Heading 9.  
20: Do you see that, right  
21: before summary?  
22: A. I do.  
23: Q. It says, "Single orders of  
24: unusual size or deviation must be

00117

01: is in quotes -- "to mean prior to  
02: shipment."  
03: Do you see that?  
04: A. I do.  
05: Q. Did I read that correctly?  
06: A. You did.  
07: Q. So do you understand this to  
08: be saying that an order has to be  
09: identified before shipping it?  
10: MR. WEINSTEIN: Objection to  
11: form, foundation, scope. And  
12: calls for a legal conclusion.  
13: THE WITNESS: Again, I see  
14: what it says here on paper. But  
15: again I'm not an attorney. I'm  
16: not exactly sure what the practice  
17: would require.  
18: BY MR. PIFKO:  
19: Q. Okay. All I'm asking you is  
20: what you understand this document to be  
21: saying. You understand it to be saying  
22: that an order needs to be identified and  
23: reported prior to shipment.  
24: MR. WEINSTEIN: Mark, he

p. 00115

p. 00117

00116

01: reported immediately."  
02: Do you see that?  
03: A. I do.  
04: Q. Is that consistent with your  
05: understanding of what's required?  
06: MR. WEINSTEIN: Objection to  
07: form, foundation, and scope. And  
08: calls for a legal conclusion.  
09: THE WITNESS: Again, I see  
10: what that -- it states. Again,  
11: I'm not an attorney, so I don't  
12: know what the individual practice  
13: would require.  
14: BY MR. PIFKO:  
15: Q. Okay. Then it says here,  
16: "The submission of a monthly printout of  
17: after-the-fact sales will not relieve a  
18: registrant from the responsibility of  
19: reporting these single excessive or  
20: suspicious orders."  
21: Did I read that correctly?  
22: A. You did.  
23: Q. Then it says, "DEA has  
24: interpreted 'orders'" -- the word orders

00118

01: said he's never seen this document  
02: before.  
03: THE WITNESS: I -- I can  
04: read what -- what the document  
05: says, yes.  
06: BY MR. PIFKO:  
07: Q. Is that -- is that what your  
08: understanding of the document is? That's  
09: all I'm asking.  
10: MR. WEINSTEIN: Objection to  
11: form. Objection to scope.  
12: He's testified he's never  
13: seen this document before. The  
14: document says what it says.  
15: THE WITNESS: Again, the  
16: document says what it says and I  
17: can read what it says.  
18: BY MR. PIFKO:  
19: Q. Okay. But you have English  
20: comprehension. You understand when you  
21: read something, right?  
22: A. I -- I do have English  
23: comprehension.  
24: Q. Okay. So all I'm asking you

p. 00116

p. 00118

00119

01: is what you understand this to be saying.

02: MR. WEINSTEIN: Same

03: objections.

04: THE WITNESS: I understand

05: it says, verbatim, DEA has

06: interpreted orders to mean prior

07: to shipment.

08: BY MR. PIFKO:

09: Q. Okay. And so do you

10: understand that to mean in the context of

11: this other language in the paragraph

12: here, that that means an order has to be

13: reported prior to being shipped?

14: MR. WEINSTEIN: Objection to

15: form, foundation, scope. And

16: calls for a legal conclusion.

17: THE WITNESS: Again, that's

18: what it says. That's what I would

19: understand it to mean.

20: BY MR. PIFKO:

21: Q. Okay.

22: (Document marked for

23: identification as Exhibit

24: HDA-Kelly-12.)

00121

01: received so far. This is from our member

02: Henry Schein, Inc."

03: Do you see that?

04: A. I do.

05: Q. So as we discussed, one of

06: the things that the consultant was

07: supposed to do was to obtain copies of

08: the member companies' suspicious order

09: policies and procedures and incorporate

10: information from those into these model

11: guidelines, correct?

12: MR. WEINSTEIN: Objection to

13: form.

14: MS. MACKAY: Objection to

15: form.

16: THE WITNESS: Correct, yes.

17: BY MR. PIFKO:

18: Q. Okay. So this confirms that

19: HDA was, in fact, collecting these

20: procedures and sending them to their

21: consultant, correct?

22: A. Yes, according to this, yes.

23: Q. Do you have any reason to

24: dispute that that happened?

p. 00119

p. 00121

00120

01: BY MR. PIFKO:

02: Q. I'm handing you what's

03: marked as Exhibit 12. It's a single page

04: e-mail. Bates labeled HDA\_MDL\_000150198.

05: Take a minute to review that and let me

06: know when you're done.

07: A. Okay.

08: Q. So this is from Anita Ducca

09: to Bill Wilson, who is the consultant who

10: is putting together the best practices or

11: industry compliance guidelines, correct?

12: A. Yes.

13: Q. Okay. And this is dated

14: January 10, 2008.

15: Do you see that?

16: A. Yes.

17: Q. She says, "Bill, all week we

18: have been contacting our members to

19: request their suspicious order

20: information."

21: Did I read that correctly?

22: A. You did.

23: Q. "This is the first of a few

24: e-mails I'll be sending with what we

00122

01: A. I do not.

02: (Document marked for

03: identification as Exhibit

04: HDA-Kelly-13.)

05: BY MR. PIFKO:

06: Q. I'm handing you what's

07: marked as Exhibit 13. It's another

08: single page -- well, there's a tiny bit

09: of language on the second page.

10: MR. WEINSTEIN: And, Mark, I

11: should just say, to avoid any

12: confusion on the record, there's

13: obviously references throughout to

14: members. Mr. Kelly is obviously

15: interpreting that when you use

16: that phrase to mean the

17: distributor members.

18: If at any point you are

19: specifically referring to

20: manufacturer members, if you could

21: just make that clear, so that we

22: have a clear record, I would

23: appreciate that.

24: BY MR. PIFKO:

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00123

01: Q. Exhibit 13 is a document  
02: Bates-labeled HDA\_MDL\_000139414 through  
03: 415.  
04: MR. PIFKO: And, Brian, to  
05: be clear, I understand that you're  
06: trying to make your record, but  
07: you can't be coaching the witness.  
08: You can't be saying things like  
09: he's never seen this before --  
10: MR. WEINSTEIN: I absolutely  
11: can --  
12: MR. PIFKO: You can't be  
13: saying things like --  
14: MR. WEINSTEIN: -- when you  
15: ask an inappropriate question.  
16: MR. PIFKO: -- here -- here  
17: is what the -- he's referring to.  
18: You're not being deposed here.  
19: Okay?  
20: MR. WEINSTEIN: Mark, if you  
21: ask an inappropriate question I'm  
22: going to protect the record.  
23: MR. PIFKO: You can -- you  
24: can -- no --

00125

01: January 17, 2008.  
02: Do you see that?  
03: A. I do.  
04: Q. The subject is "Rewrite."  
05: And here he's sending a draft of the  
06: questionnaire. You recall that that was  
07: the first step of his engagement,  
08: correct?  
09: A. Yes.  
10: Q. Okay. Do you have any  
11: dispute -- any reason to dispute that  
12: this is the first draft or one of the  
13: drafts of his questionnaire that he was  
14: going to be asking members when he  
15: interviewed them?  
16: MR. WEINSTEIN: Objection to  
17: form.  
18: THE WITNESS: I have no  
19: reason to dispute that this is the  
20: first draft.  
21: BY MR. PIFKO:  
22: Q. Okay. And one of the topics  
23: that he wants to ask HDMA's members is,  
24: he says, "DEA says 'know your customer.'

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00124

01: MR. WEINSTEIN: So ask your  
02: question --  
03: MR. PIFKO: -- you can  
04: object to form. You can object  
05: for specificity --  
06: MR. WEINSTEIN: I can object  
07: when you ask an inappropriate  
08: question.  
09: MR. PIFKO: But you can't --  
10: those are speaking objections --  
11: MR. WEINSTEIN: Absolutely  
12: not.  
13: MR. PIFKO: -- and we're not  
14: going to have those. Okay?  
15: MR. WEINSTEIN: Absolutely  
16: not. I'm very disciplined, and  
17: I'll continue to act  
18: appropriately.  
19: BY MR. PIFKO:  
20: Q. Let me know when you're done  
21: reviewing this document.  
22: A. Okay.  
23: Q. So this is from Bill Wilson,  
24: the consultant, e-mailing Ms. Ducca on

00126

01: What is your understanding of that  
02: statement and what as a company are you  
03: doing to meet that requirement?"  
04: Do you see that?  
05: A. I do.  
06: Q. Okay. Then there's a bunch  
07: of questions. He has, "What steps do you  
08: take about adding a new customer?"  
09: Various questions about things people  
10: could ask a new customer.  
11: Do you see that?  
12: A. I do.  
13: Q. "How do you handle  
14: discrepancies if they don't answer the  
15: questions or if they leave something  
16: blank?"  
17: Do you see that?  
18: A. No.  
19: Q. Just below the block of  
20: questions about adding a new customer.  
21: "Based on information you gather from the  
22: potential customer, how do you handle  
23: discrepancies in the information" --  
24: A. Okay. Okay. You -- all

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00127

01: right. Yes.  
02: Q. That was something else that  
03: he was asking?  
04: MR. WEINSTEIN: Objection to  
05: form.  
06: BY MR. PIFKO:  
07: Q. To the members, correct?  
08: MR. WEINSTEIN: Same  
09: objection.  
10: THE WITNESS: Yes. Again,  
11: this is the draft. So I don't  
12: know what the actual final vehicle  
13: entailed or not.  
14: BY MR. PIFKO:  
15: Q. Okay. One of the questions  
16: is, "Do you feel what you are doing now  
17: should be sufficient?"  
18: Do you see that?  
19: A. I do.  
20: Q. You understand that that was  
21: something that he was asking the members?  
22: MR. WEINSTEIN: Objection to  
23: form.  
24: THE WITNESS: Again, whether

00129

01: A. Correct.  
02: MR. WEINSTEIN: Objection to  
03: form.  
04: BY MR. PIFKO:  
05: Q. This concerns developing  
06: them, correct?  
07: A. It does. I've not seen this  
08: e-mail before.  
09: Q. If you turn to the second  
10: page. Two other questions here, "In  
11: building a model for compliance, what  
12: steps do you feel are essential to a good  
13: compliance program?"  
14: Do you see that?  
15: A. I do.  
16: Q. You understand that that was  
17: something that was asked of HDA members  
18: in connection with this project?  
19: MR. WEINSTEIN: Objection to  
20: form. Foundation.  
21: THE WITNESS: Again, it was  
22: part of the initial draft.  
23: BY MR. PIFKO:  
24: Q. How about, "In building a

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p. 00129

00128

01: that was in the final. This is a  
02: draft. And again, I don't know if  
03: that was the final. I know that  
04: was here on the paper, but first  
05: draft.  
06: BY MR. PIFKO:  
07: Q. Okay. You understand Topic  
08: 4 is the guidelines and the process of --  
09: A. Correct.  
10: Q. -- gathering them, and that  
11: is something that you're designated to  
12: testify on about, right?  
13: A. I do.  
14: Q. And you have a duty to be  
15: familiar with all the attributes of it,  
16: correct?  
17: MR. WEINSTEIN: Objection to  
18: form.  
19: THE WITNESS: Of the  
20: document -- yes. Of the ICGs,  
21: yes, and the process.  
22: BY MR. PIFKO:  
23: Q. Okay. And the development  
24: of them, correct?

00130

01: model for compliance, what steps do you  
02: feel you could not do based on your  
03: customer base?"  
04: Do you see that?  
05: A. I do.  
06: Q. You understand that that was  
07: also something that was being discussed  
08: with the members in connection with  
09: drafting these guidelines?  
10: MR. WEINSTEIN: Objection to  
11: form. Foundation.  
12: THE WITNESS: Again, I think  
13: it was part of the first draft,  
14: yes.  
15: BY MR. PIFKO:  
16: Q. You recall in some of the  
17: other discussions that we looked at in  
18: the prior exhibits, feasibility of the  
19: guidelines and adaptability was a feature  
20: that HDMA and its members wanted to  
21: include in the guidelines, correct?  
22: MR. WEINSTEIN: Objection to  
23: form.  
24: THE WITNESS: Correct.

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00131

01: BY MR. PIFKO:  
02: Q. You didn't want to have  
03: guidelines that its member companies  
04: could not adopt, correct?  
05: MR. WEINSTEIN: Objection to  
06: form. Foundation.  
07: THE WITNESS: Correct.  
08: (Document marked for  
09: identification as Exhibit  
10: HDA-Kelly-14.)  
11: BY MR. PIFKO:  
12: Q. I'm handing you what's  
13: marked Exhibit 14. For the record,  
14: Exhibit 14 is a two-page document  
15: Bates-labeled HDA\_MDL\_00213181 through  
16: 82. Take a minute to review it. Let me  
17: know when you're done. It's another  
18: e-mail from Ms. Ducca, two e-mails from  
19: her, one dated Wednesday, February 6,  
20: 2008, and another one dated the same day,  
21: just from an earlier time.  
22: A. Okay.  
23: Q. What do you know about Bill  
24: Wilson's background?

00133

01: Do you see that?  
02: A. I do.  
03: Q. So there was going to be a  
04: meeting on February 7th to discuss the  
05: revised draft best practices, correct?  
06: A. Yes.  
07: Q. On the -- on the first page  
08: of the e-mail she discusses a meeting  
09: that occurred on January 31, 2008. If  
10: you look at the attachments on the -- on  
11: the header, it says, "Final slides for  
12: 1/31/08."  
13: Do you see that?  
14: HDMA. And then it also  
15: says, "HDMA 01/31/08, D. Durkin."  
16: Do you see that?  
17: A. I do, yes.  
18: Q. Okay. You recall that one  
19: of the things in the discussions with the  
20: consultant was that there was a deadline  
21: of January 30th to get a draft of the  
22: guidelines?  
23: A. I -- I do recall that, yes.  
24: Q. Okay. And you agree that

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p. 00133

00132

01: A. I have never met Bill  
02: Wilson. He was engaged during a time  
03: before I got to the organization. I  
04: understand that he was a consultant with  
05: expertise in compliance-related issues.  
06: I don't know if he had any specific DEA  
07: experience or not.  
08: Q. Looking at Exhibit 14, if  
09: you -- you know how you read e-mails on  
10: these. You have to read the back pages,  
11: or the earlier pages.  
12: So looking at the second  
13: page, it's -- this e-mail Ms. Ducca  
14: sends, Wednesday, February 6, 2008, and  
15: the subject is HDMA RAC conference call  
16: reminder.  
17: RAC is regulatory affairs  
18: committee, correct?  
19: A. That's correct.  
20: Q. And then it says here, "To  
21: regulatory affairs committee.  
22: Participants in the January 31 HDMA  
23: meeting on suspicious order best  
24: practices."

00134

01: there was a meeting on January 31, 2008,  
02: to discuss the guidelines and various  
03: other aspects of it, of the project?  
04: A. Yes.  
05: Q. So looking at this first  
06: page of the first e-mail, the top, the  
07: more recent one, the second paragraph,  
08: she says, "The meeting went very well and  
09: we had excellent member input."  
10: That's discussing the  
11: January 31, 2008, meeting, correct?  
12: A. Yes.  
13: Q. "We discussed DEA's  
14: requirements, expectations and recent  
15: letters, and discussed the importance and  
16: use of a set of best practices and what  
17: the next steps will be after they are  
18: completed."  
19: Do you see that?  
20: A. I do.  
21: Q. Then she says, "I have  
22: attached the overhead slides that HDMA  
23: and our outside counsel provided at the  
24: meeting. They go through what we said

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00135

01: about the above."  
02: Do you see that?  
03: A. I do.  
04: Q. And then she says, "We also  
05: reviewed a draft of best practices that  
06: HDMA (a consultant and me) have put  
07: together."  
08: Do you see that?  
09: A. I do.  
10: Q. So Ms. Ducca and the  
11: consultant worked together to put the  
12: guidelines together?  
13: A. Yes.  
14: Q. And then they were discussed  
15: with the member -- members at this  
16: meeting, she says, based on input from  
17: members at the meeting.  
18: Do you see that?  
19: A. I do.  
20: Q. And then she says, "We  
21: prepared a revised draft for additional  
22: comment, and that revised draft is  
23: attached."  
24: Do you see that?

00137

01: Q. Okay. The second -- the  
02: first page of the Exhibit 15 is just a  
03: cover page. The second page is the  
04: agenda for the discussion.  
05: Do you see that?  
06: A. Yes.  
07: Q. So review the antitrust and  
08: antiharassment policies.  
09: Then, background, DEA  
10: suspicious order requirements. And  
11: HDMA's best practices, the efforts to  
12: date. Then legal and policy perspective.  
13: Then there was going to be a  
14: discussion about the potential best  
15: practices, questions for attendees. And  
16: then a discussion, allows for member  
17: input. And then discussion of model  
18: modifications, areas for further review.  
19: And then a discussion of next steps,  
20: additional DEA issues.  
21: Do you see that?  
22: A. I do.  
23: Q. Do you agree that this was  
24: the agenda of this portion of the -- the

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00136

01: A. I do.  
02: Q. Okay. And then, as we  
03: discussed a moment ago, then there was  
04: going to be another call on February 7th  
05: to discuss the revised draft. Agree?  
06: A. Yes.  
07: Q. I'm going to hand you these  
08: handouts from the January 31st meeting  
09: starting with the first one which is  
10: marked as Exhibit 15.  
11: (Document marked for  
12: identification as Exhibit  
13: HDA-Kelly-15.)  
14: BY MR. PIFKO:  
15: Q. For the record, it's  
16: Bates-labeled HDA\_MDL\_000213212 through  
17: 213228.  
18: Let me know when you're  
19: done. Again, take as much time as you  
20: need to review the document, but I'm only  
21: going to ask you about a couple slides.  
22: A. Okay.  
23: Q. Are you ready?  
24: A. I am.

00138

01: meeting?  
02: A. I do.  
03: Q. I want to go to the fourth  
04: page of the exhibit. It's got a little  
05: bit of a timeline here. Let me know when  
06: you're there.  
07: A. I'm there.  
08: Q. Okay. So it says, "Best  
09: practices identified as a possible  
10: solution."  
11: This is the solution to the  
12: increased DEA enforcement activity as we  
13: discussed at the beginning of the  
14: deposition, correct?  
15: MR. WEINSTEIN: Objection to  
16: form.  
17: THE WITNESS: Yes.  
18: BY MR. PIFKO:  
19: Q. Okay. And so the best  
20: practices was identified as a solution on  
21: October 16, 2007, during an HDMA-DEA  
22: meeting.  
23: MR. WEINSTEIN: Objection to  
24: form.

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00139

01: BY MR. PIFKO:  
02: Q. Agree?  
03: A. That's -- yeah, that's what  
04: it says. Yes.  
05: Q. Okay. And it's an HDMA  
06: meeting regarding the DEA, right?  
07: A. I believe it might have  
08: been -- again, I'm not -- it was a --  
09: either a meeting directly with DEA or  
10: a -- if we -- is that on the timeline?  
11: Q. That other meeting we talked  
12: about with -- with --  
13: A. Yeah, this was with DEA.  
14: Q. Okay.  
15: A. DEA participated in that  
16: event.  
17: Q. Okay. And then there was a  
18: recommendation from outside counsel to  
19: move forward on December 19, 2007, agree?  
20: A. Yes.  
21: Q. And then there was the  
22: request for members' existing best  
23: practices on January 3, 2008. Agree?  
24: MR. WEINSTEIN: Objection to

00141

01: Q. The pain coalition, that's  
02: the Pain Care Forum officially?  
03: A. I believe it's one and the  
04: same.  
05: Q. Okay. And that includes  
06: manufacturers in the pharmaceutical  
07: industry, correct?  
08: MS. MACKAY: Objection.  
09: Foundation.  
10: THE WITNESS: It includes --  
11: my understanding, it includes a  
12: variety of constituent groups in  
13: the supply chain, including  
14: patient groups, and manufacturers,  
15: and distributors and pharmacies,  
16: et cetera.  
17: BY MR. PIFKO:  
18: Q. Okay. But -- so all I'm  
19: asking you is the Pain Care Forum  
20: includes, among others, manufacturers in  
21: the pharmaceutical industry, correct?  
22: MS. MACKAY: Objection.  
23: Foundation.  
24: THE WITNESS: That's

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00140

01: form.  
02: THE WITNESS: Yes.  
03: BY MR. PIFKO:  
04: Q. And then the interviews and  
05: follow-up requests occurred from  
06: January 7th to January 11th. Agree?  
07: A. Yes.  
08: Q. And then there was a  
09: presentation to the pain coalition on  
10: January 1st, 2010 -- or, sorry,  
11: January 10, 2008.  
12: Do you see that?  
13: A. I do.  
14: Q. Do you have an understanding  
15: as to why the -- there was a presentation  
16: to the pain coalition about the best  
17: practices for suspicious orders?  
18: A. My understanding is that was  
19: a monthly meeting, that group met fairly  
20: regularly. And we went to apprise them  
21: of the fact that we were developing the  
22: guidelines for suspicious order  
23: monitoring and reporting based on recent  
24: DEA actions.

00142

01: correct.  
02: BY MR. PIFKO:  
03: Q. And the pain coalition, or  
04: pain care foundation is specifically  
05: focused on pain by its -- by definition,  
06: correct?  
07: MS. MACKAY: Objection --  
08: MS. ROLLINS: Objection to  
09: form.  
10: MS. MACKAY: Objection.  
11: Form. Foundation.  
12: THE WITNESS: Again, the  
13: Pain Care Forum -- Pain Care Forum  
14: I think is the official name.  
15: Again, issues and policies  
16: related to the treatment of  
17: individuals with pain, chronic  
18: pain, terminal pain. Those types  
19: of things.  
20: BY MR. PIFKO:  
21: Q. Treatment of pain?  
22: MS. MACKAY: Objection.  
23: Foundation. Form.  
24: THE WITNESS: Treatment --

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00143

01: treatment of pain, yes.  
02: BY MR. PIFKO:  
03: Q. Pain advocacy?  
04: MS. MACKAY: Same  
05: objections.  
06: MR. WEINSTEIN: Objection to  
07: form.  
08: THE WITNESS: Not so much  
09: advocacy, more of just information  
10: about policies that are being  
11: discussed.  
12: BY MR. PIFKO:  
13: Q. And in connection with your  
14: work for the HDA, have you attended a  
15: Pain Care Forum meeting?  
16: A. I personally have not.  
17: Q. Have you discussed Pain Care  
18: Forum meetings with your colleagues?  
19: A. I am aware of past Pain Care  
20: Forum meetings, yes.  
21: Q. You are familiar with the  
22: Pain Care Forum and its objectives and  
23: its membership based on your role for the  
24: HDA?

00145

01: Q. Do you remember discussing  
02: HDA ceasing to be a member of the Pain  
03: Care Forum?  
04: A. Vaguely.  
05: Q. Who did you discuss that  
06: with?  
07: A. Again, one of the  
08: discussions we have on an annual basis  
09: about where we are -- have resources and  
10: events and groups we're participating  
11: with.  
12: Q. Okay. In one of these  
13: annual meetings you discussed the HDA's  
14: involvement with the Pain Care Forum?  
15: MS. MACKAY: Form.  
16: MR. WEINSTEIN: Objection to  
17: form.  
18: THE WITNESS: Again, there  
19: was a decision made -- I don't  
20: know when -- to not participate  
21: with the Pain Care Forum any  
22: longer.  
23: BY MR. PIFKO:  
24: Q. Okay. Do you know what the

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00144

01: A. Again, generally, yes.  
02: Not -- I couldn't name specific members  
03: other than -- the top of my head.  
04: Q. The HDMA is a member of the  
05: Pain Care Forum, correct?  
06: A. We are no longer a member of  
07: the Pain Care Forum.  
08: Q. But you were?  
09: A. At one point we were.  
10: Q. When did you stop being a  
11: member of the Pain Care Forum?  
12: A. I don't know the specific  
13: date.  
14: Q. In the last year?  
15: A. Beyond that.  
16: Q. Two years ago?  
17: A. Again, I don't know the  
18: specific date.  
19: Q. Let's do this. When did you  
20: join HDA?  
21: A. 2011.  
22: Q. Was HDA a member of the Pain  
23: Care Forum when you first joined HDA?  
24: A. I don't know for certain.

00146

01: basis for that decision was?  
02: A. Just general -- didn't have  
03: staffing and resources to continue to  
04: send people out to meetings and events.  
05: Q. Okay. We'll come back to  
06: that. Next slide, Page 5 of Exhibit 15.  
07: Are you there?  
08: A. Yes.  
09: Q. It says the desired outcome  
10: of the best practices, "Agree upon  
11: fundamentals of distribution industry  
12: best practices for suspicious orders for  
13: government public policy committee  
14: review. Eventually provide to DEA."  
15: Do you see that?  
16: A. I do.  
17: Q. Did I read that correctly?  
18: A. You did.  
19: Q. Is that consistent with what  
20: your understanding of the desired outcome  
21: was?  
22: MR. WEINSTEIN: Objection to  
23: form.  
24: THE WITNESS: Yes, at this

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00147

01: point in time, yes.  
02: BY MR. PIFKO:  
03: Q. Another goal of the meeting  
04: and this ongoing discussion was to reach  
05: agreement among HDA's members on these  
06: best practices or guidelines, correct?  
07: MR. WEINSTEIN: Objection to  
08: form.  
09: THE WITNESS: Yes.  
10: BY MR. PIFKO:  
11: Q. If you go to Page 7 of  
12: Exhibit 15. It's got some bullet points  
13: of attributes of the system. One of them  
14: is, "Develop thresholds."  
15: Do you see that?  
16: A. Yes.  
17: Q. It says, "Calculate average  
18: orders for families."  
19: Do you see that?  
20: A. Yes.  
21: Q. "ID orders of unusual size,  
22: frequency, pattern"?  
23: A. Yes.  
24: Q. "And stop shipments"?

00149

01: suspicious order as far as whether it  
02: could be shipped?  
03: MR. WEINSTEIN: Objection to  
04: form.  
05: THE WITNESS: Again, yes.  
06: BY MR. PIFKO:  
07: Q. I want to go to Page 12 of  
08: the document.  
09: So then, this discusses some  
10: of the next steps. Ultimately there was  
11: going to be a government public policy  
12: committee review of the best practices or  
13: guidelines on February 12th. Agree?  
14: MR. WEINSTEIN: Objection to  
15: form.  
16: THE WITNESS: Yes.  
17: BY MR. PIFKO:  
18: Q. Sorry, it's the government  
19: public policy council, correct?  
20: A. Correct.  
21: Q. Okay. Then the executive  
22: committee is going to review them on  
23: February 22nd, correct?  
24: A. Yes.

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00148

01: A. Yes.  
02: Q. Those were all features of  
03: the guidelines or best practices that you  
04: were working on --  
05: MR. WEINSTEIN: Objection.  
06: BY MR. PIFKO:  
07: Q. -- at this time?  
08: MR. WEINSTEIN: Objection to  
09: form.  
10: THE WITNESS: Yes. It's my  
11: understanding.  
12: BY MR. PIFKO:  
13: Q. If you go to Page 8 of the  
14: document. It talks -- there's another  
15: attribute. It says "shipping" --  
16: "shipment decisions."  
17: Do you see that?  
18: A. I do.  
19: Q. Four decision options.  
20: Do you see that?  
21: A. I do.  
22: Q. So you understood there was  
23: going to be various options set out for  
24: what someone could do when evaluating a

00150

01: Q. And then you're going to  
02: request a meeting with the acting DEA  
03: administrator, correct?  
04: A. Correct.  
05: Q. And one question had was,  
06: "Should the best practices become a  
07: regulation?" Correct?  
08: A. Correct.  
09: Q. That was something that HDA  
10: and its members were discussing?  
11: A. Correct.  
12: MS. MACKAY: Objection to  
13: form.  
14: BY MR. PIFKO:  
15: Q. I'll direct you to Page 17  
16: of Exhibit 15. Another thing that was  
17: still being considered at this time was  
18: whether HDA and its members would mount  
19: a legal challenge to DEA, correct?  
20: A. Yes.  
21: Q. And then it says, "May  
22: require extensive justification."  
23: Do you see that?  
24: A. Yes.

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00151

01: Q. "For example, DEA changed a  
02: 30-year reporting requirement to stopping  
03: transactions."  
04: Do you see that?  
05: A. Yes.  
06: Q. So one of the things that  
07: HDA and its members were discussing at  
08: this time in response to the DEA's  
09: enforcement activity was to mount a legal  
10: challenge concerning the reporting  
11: requirement and whether it required  
12: members to stop transactions?  
13: MR. WEINSTEIN: Objection to  
14: form.  
15: THE WITNESS: Yes.  
16: (Document marked for  
17: identification as Exhibit  
18: HDA-Kelly-16.)  
19: BY MR PIFKO:  
20: Q. I'm handing you what's  
21: marked as Exhibit 16. For the record,  
22: this is another presentation from that  
23: meeting. Bates-labeled HDA\_MDL\_000213229  
24: through 213240.

00153

01: THE WITNESS: The ones  
02: that -- that participated, yes.  
03: BY MR. PIFKO:  
04: Q. And so those members would  
05: have been part of the discussion on  
06: January 31, 2008, where these were  
07: presented, correct?  
08: MR. WEINSTEIN: Objection to  
09: form.  
10: THE WITNESS: The ones that  
11: participated definitely, yes.  
12: BY MR. PIFKO:  
13: Q. And that included the big  
14: three who participated, correct?  
15: MS. ROLLINS: Objection to  
16: form.  
17: THE WITNESS: Again, I don't  
18: have the exact list of  
19: participants in front of me, but I  
20: would imagine, yes.  
21: BY MR. PIFKO:  
22: Q. Because they're -- they're  
23: on the regulatory affairs committee,  
24: correct?

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00152

01: One of the things referenced  
02: in Ms. Ducca's e-mail, Exhibit 14, was  
03: that she's attaching slides from HDMA and  
04: the outside counsel.  
05: This is the presentation  
06: from HDMA's outside counsel at that  
07: meeting. Please review it and let me  
08: know when you're ready to discuss.  
09: A. Okay.  
10: Q. The discussion regarding the  
11: industry compliance guidelines or best  
12: practices was being facilitated through  
13: the regulatory affairs committee; is that  
14: correct?  
15: MR. WEINSTEIN: Objection to  
16: form.  
17: THE WITNESS: Correct.  
18: BY MR. PIFKO:  
19: Q. Yes?  
20: A. Yes.  
21: Q. And again that included all  
22: of HDA's distributor members, correct?  
23: MR. WEINSTEIN: Objection to  
24: form.

00154

01: A. Yes.  
02: Q. Trying to -- so again, as we  
03: talked about when I handed you this  
04: exhibit, this is from HDMA's outside  
05: counsel. It is a presentation entitled,  
06: "Suspicious Orders and Diversion  
07: Prevention," which was presented at the  
08: meeting on January 31st in -- at HDMA's  
09: offices in Arlington, Virginia, correct?  
10: A. That's my understanding,  
11: yes.  
12: Q. If you go to the third page  
13: of the document, they are laying out the  
14: statutory framework and conditions of  
15: registration for -- do you see that here?  
16: A. I do.  
17: Q. Okay. The second bullet  
18: point says, "The first factor in  
19: determining the public interest is the  
20: maintenance of effective controls against  
21: diversion into other than legitimate  
22: channels," correct?  
23: MR. WEINSTEIN: Objection to  
24: form. Foundation.

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00155

01: THE WITNESS: Yes. That's  
02: what it says.  
03: BY MR. PIFKO:  
04: Q. If you go to the one with  
05: the Bates number 213234 it says "Prior  
06: Experience" on the top.  
07: A. I see it.  
08: Q. It says, under the heading  
09: "Prior Experience," "DEA would not tell a  
10: distributor if an order is legitimate or  
11: not."  
12: Do you see that?  
13: A. Yes.  
14: Q. And then it says, "DEA would  
15: tell the distributor that it must decide  
16: which orders are suspicious and make a  
17: sales decision."  
18: Do you see that?  
19: A. Yes.  
20: Q. The next slide has got some  
21: criteria for suspicious orders.  
22: Do you see that?  
23: A. I do.  
24: Q. Seven bullet points,

00157

01: A. Yes.  
02: Q. Location of customer?  
03: A. Yes.  
04: Q. Different combinations of  
05: drugs, correct?  
06: MS. ROLLINS: Objection.  
07: MS. MACKAY: Object to form.  
08: MR. WEINSTEIN: Objection to  
09: form.  
10: THE WITNESS: It says only  
11: phentermine, hydrocodone, and/or  
12: alprazolam.  
13: BY MR. PIFKO:  
14: Q. Like if an order is only  
15: those things, that potentially could be  
16: suspicious. That's what it's saying  
17: here?  
18: MR. WEINSTEIN: Objection to  
19: form. Foundation.  
20: THE WITNESS: I imagine,  
21: yes.  
22: BY MR. PIFKO:  
23: Q. No established business  
24: credit, yes?

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00156

01: correct?  
02: A. Yes, correct.  
03: Q. And these aren't simply  
04: repeating unusual size, pattern or  
05: frequency, correct?  
06: MR. WEINSTEIN: Objection to  
07: form.  
08: THE WITNESS: It goes beyond  
09: that.  
10: BY MR. PIFKO:  
11: Q. Right. It elaborates on  
12: what that could mean, correct?  
13: MR. WEINSTEIN: Objection to  
14: form.  
15: THE WITNESS: That's what it  
16: says, yes.  
17: BY MR. PIFKO:  
18: Q. Quantities of drugs  
19: purchased, correct?  
20: A. Correct.  
21: Q. Percentage of controlled  
22: versus noncontrolled, correct?  
23: A. That's what it says, yes.  
24: Q. Size of orders, correct?

00158

01: A. Yes. That's what it says.  
02: Q. Frequent large orders,  
03: correct?  
04: A. Yes.  
05: Q. Next slide is headed  
06: "Issues."  
07: Second bullet point, it  
08: says, "Is the failure to report an  
09: unusual order a violation if the drug is  
10: dispensed for a lawful purpose?"  
11: Do you see that?  
12: A. Yes.  
13: Q. So one of the things that  
14: was discussed at this meeting was whether  
15: it could still be a violation of the  
16: regulations in the CSA if you didn't  
17: report an unusual order even if it was  
18: for a lawful purpose, correct?  
19: A. Again, I think this one was  
20: posited as a question.  
21: Q. But my point is, that was  
22: something that was being discussed.  
23: Whether -- whether that would be a  
24: violation or not, that was something

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00159

01: people were discussing at this meeting?  
02: MR. WEINSTEIN: Objection to  
03: form.  
04: THE WITNESS: That's -- yes.  
05: BY MR. PIFKO:  
06: Q. Another thing discussed, if  
07: you go to the slide, 000213238. Let me  
08: know when you're there.  
09: A. "What has changed?"  
10: Q. Yes.  
11: A. Yes.  
12: Q. Second bullet point, it  
13: says, "The suspicious nature of the order  
14: depends not on pattern of ordering  
15: customer, but on patterns of registrant's  
16: customer base and patterns throughout the  
17: regulated industry."  
18: Do you see that?  
19: A. I do.  
20: Q. That was something else  
21: discussed at this meeting?  
22: A. It -- it was.  
23: Q. Also that rigid formulas  
24: were -- may be insufficient as well,

00161

01: A. Yes.  
02: Q. So he attaches this draft.  
03: It says, "Discussion draft for meeting."  
04: as the file name. Do you see that on the  
05: first page?  
06: A. Yes.  
07: Q. And then the following pages  
08: are that discussion draft.  
09: It says, "Discussion draft,  
10: 1/31/08."  
11: Do you see that?  
12: A. Yes.  
13: Q. So this is the draft that  
14: was discussed during that meeting,  
15: correct?  
16: A. Yes.  
17: Q. So it's got several  
18: features. Heading 1 is "Know Your  
19: Customer."  
20: Do you see that?  
21: A. Yes.  
22: Q. It says, "Before opening up  
23: a new customer account, it is recommended  
24: that the distributor obtain background

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00160

01: correct?  
02: A. That was discussed.  
03: (Document marked for  
04: identification as Exhibit  
05: HDA-Kelly-17.)  
06: BY MR. PIFKO:  
07: Q. Handing you what's marked as  
08: Exhibit 17. For the record, it's an  
09: e-mail with an attachment. Bates-labeled  
10: HDA\_MDL\_000141125 through 141133. This  
11: is an e-mail from Mr. Wilson dated  
12: Tuesday, February 5, 2008, to Ms. Ducca,  
13: attaching a discussion draft of the  
14: interim -- industry compliance or best  
15: practices guidelines.  
16: Take a moment to review this  
17: and let me know when you're ready.  
18: A. Okay.  
19: Q. Do you recall one of the  
20: attributes of the scope of work that  
21: Mr. Wilson was supposed to provide was to  
22: draft -- put together an initial draft  
23: and then potentially attend meetings and  
24: do revisions, correct?

00162

01: information on the customer and their  
02: business, review the information for  
03: discrepancies, and where appropriate,  
04: verify the information."  
05: Do you see that?  
06: A. I do.  
07: Q. And then it says, "The  
08: following information is recommended,"  
09: and it's got a whole host of information.  
10: Do you see that?  
11: A. Yeah. The following is  
12: recommended -- yes, information gathered,  
13: yes.  
14: Q. Okay. At the bottom it  
15: says, "Identify high purchasing doctors.  
16: Also for pain clinics, identify high  
17: writing doctors in the store's area."  
18: Do you see that?  
19: A. Right. And I -- what I  
20: don't see here is that appears to be in a  
21: different shade of font, whether that was  
22: a note or that was part of -- it appears  
23: that these are -- there are some notes  
24: that are included. There's like the

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00163

01: draft document and then there are notes.  
02: Q. Well, as we discussed, there  
03: was a draft and then there was going to  
04: be discussion. We know that from the  
05: PowerPoints that we just went over as  
06: Exhibits 15 and 16, that there was a  
07: discussion of these during the meeting  
08: with the members, correct?  
09: A. Yes.  
10: Q. Page 2 of the draft has got  
11: some other information. "Questionnaires  
12: must be update periodically especially  
13: when new areas are developed for  
14: investigation."  
15: Do you see that?  
16: A. I do.  
17: Q. That's still under the  
18: heading of "know your customer," correct?  
19: A. Yeah, but it also appears to  
20: be in a different font or a different  
21: shade of font, so...  
22: Q. Okay. "Whoever completes  
23: the investigation must have documented  
24: formalized training."

00165

01: A. Yes.  
02: Q. So one of them is, "DEA  
03: distinguishes between an order and a  
04: sale. Please note in the above cited  
05: regulation there is no mention of a  
06: sale."  
07: Do you see that?  
08: A. I do.  
09: Q. Agree?  
10: MR. WEINSTEIN: Objection to  
11: form.  
12: BY MR. PIFKO:  
13: Q. That's what it says?  
14: A. I agree that's what it says,  
15: yes.  
16: Q. "DEA believes that a  
17: registrant should be able to determine if  
18: an order meets the above description of  
19: suspicious when they receive the order,  
20: not when they ship it. This is  
21: particularly true for orders of unusual  
22: size."  
23: Agree?  
24: MR. WEINSTEIN: Objection to

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00164

01: Do you see that?  
02: A. I do see that.  
03: Q. "Site visits should be  
04: conducted when possible."  
05: A. I see that, yes.  
06: Q. Then it's got a Section 2  
07: that is headed "Suspicious Order  
08: Monitoring."  
09: Do you see that?  
10: A. I do.  
11: Q. And then it's got a  
12: background. It's got a citation to the  
13: regulation.  
14: Do you see that?  
15: A. I do.  
16: Q. And then it's got DEA  
17: interpretations.  
18: Do you see that?  
19: A. I do.  
20: Q. And move to the third page,  
21: we see what those are, correct?  
22: A. Yes.  
23: Q. There's four discussion  
24: points there, correct?

00166

01: form.  
02: THE WITNESS: That's what it  
03: says, yes.  
04: BY MR. PIFKO:  
05: Q. Okay. "DEA has indicated  
06: that cutting back on an order and  
07: shipping less to avoid the suspicious  
08: order definition (or to meet some  
09: predetermined ship limit) does not  
10: relieve distributors of the  
11: responsibility of reporting the order as  
12: fitting the suspicious order criteria."  
13: Do you see that?  
14: A. I do.  
15: Q. And Item 4 says, "It is  
16: likely that orders deviating  
17: substantially from the normal pattern and  
18: orders of unusual frequency will only be  
19: 'discovered by the registrant' after a  
20: number of shipments have been made. DEA  
21: expects shipments of such orders to be  
22: stopped pending the outcome of an  
23: investigation."  
24: Do you see that?

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00167

01: A. I do see that.  
02: Q. So you understood this as  
03: documented here, were all DEA  
04: interpretations of the regulation that's  
05: cited above on Page 2 correct?  
06: A. That's --  
07: MS. ROLLINS: Object to the  
08: form.  
09: THE WITNESS: That's what I  
10: understand.  
11: BY MR. PIFKO:  
12: Q. Then on Page 4, under that  
13: same heading of suspicious order  
14: monitoring, it's got another section,  
15: "Develop 'thresholds' for suspicious  
16: orders."  
17: Do you see that?  
18: A. I do.  
19: Q. Okay. And then it's got a  
20: discussion about how to calculate and  
21: develop thresholds.  
22: Do you see that?  
23: A. Yes.  
24: Q. Second paragraph says that,

00169

01: times the average for Schedule II  
02: controlled substances and reportable  
03: Schedule III orders as meeting the  
04: unusual threshold."  
05: Is that correct, that's what  
06: it says?  
07: A. Yes.  
08: Q. You understand C-II means  
09: Schedule II controlled substance,  
10: correct?  
11: A. I do.  
12: Q. That was a feature of this  
13: draft of the guidelines, correct?  
14: A. Yes.  
15: MS. WICHT: Object to the  
16: form of the question.  
17: BY MR. PIFKO:  
18: Q. Then we have Heading 3,  
19: "Investigation of suspicious orders,  
20: shipment decisions."  
21: Do you see that?  
22: A. I do.  
23: Q. First discussion point there  
24: it says, "Should a distributor wish to

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00168

01: "A threshold" -- it says, "Calculate the  
02: average single order and the average  
03: monthly order per family, per customer,  
04: and class of trade. A minimum of six  
05: months' sales history or a maximum of  
06: 24 months' sales history is recommended."  
07: Do you see that?  
08: A. I do.  
09: Q. I read that correctly?  
10: A. You did.  
11: Q. So that's part of what is  
12: being recommended for the development of  
13: thresholds for suspicious orders,  
14: correct?  
15: MR. WEINSTEIN: Objection to  
16: form.  
17: THE WITNESS: In this draft,  
18: yes.  
19: BY MR. PIFKO:  
20: Q. Okay. Then the next  
21: paragraph says, "Also identify orders of  
22: unusual size. It is recommended that  
23: distributors follow past DEA criteria.  
24: Specifically, DEA has recognized three

00170

01: reconsider and ship an order identified  
02: as potentially suspicious or part of such  
03: an order, it is recommended that he or  
04: she conduct an investigation to determine  
05: the reasons for the order."  
06: Did I read that correct?  
07: A. You did.  
08: Q. And that was part of the  
09: discussion of investigation and shipping  
10: of potentially suspicious orders,  
11: correct?  
12: A. Yes.  
13: Q. Then it says, "Designating  
14: an investigator."  
15: Do you see that?  
16: A. I do.  
17: Q. And then it says -- I'm  
18: paraphrasing -- that the person  
19: designated should have suitable  
20: experience and background to be able to  
21: investigate potential suspicious orders.  
22: Do you see that?  
23: A. Yes.  
24: Q. Then it talks about the

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00171

01: different elements of investigation on  
02: Page 5.  
03: Do you see that?  
04: A. I do.  
05: Q. One of them is to verify the  
06: customer input.  
07: Do you see that, at the  
08: bottom of that section?  
09: A. Yes.  
10: Q. It says, "For example" -- it  
11: says, "If the customer says they called  
12: DEA, verify that they actually did so."  
13: MR. WEINSTEIN: Objection to  
14: form.  
15: BY MR. PIFKO:  
16: Q. Do you see that?  
17: A. I do see that, yes.  
18: Q. So verifying customer input  
19: was an attribute -- an attribute of these  
20: guidelines at this time, correct?  
21: MS. ROLLINS: Form.  
22: MR. WEINSTEIN: Objection to  
23: form.  
24: THE WITNESS: It says "where

00173

01: Q. Okay. So one is cancel the  
02: order and report; one is investigate,  
03: cancel, and report; another one is  
04: investigate and ship, don't report; and  
05: the other one is investigate, ship, and  
06: report. Agree?  
07: A. That's what it says, yes.  
08: Q. And then there is a note  
09: here. "We need to define the point when  
10: the order becomes suspicious."  
11: Do you see that?  
12: A. Yes.  
13: Q. Then there is a question  
14: here. It says, "Note: Do all of the  
15: options above meet DEA's regulations?"  
16: Number 3: "May be  
17: inconsistent with the regulations, but  
18: consistent with DEA's verbal guidance."  
19: Do you see that?  
20: A. I do.  
21: Q. And that's saying  
22: investigate and ship, but don't report,  
23: correct, that's Number 3 is?  
24: A. That's what Number 3 is,

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00172

01: appropriate" on the first line of  
02: that. Yes, "Verify customer input  
03: where appropriate. For example,"  
04: and these are examples.  
05: BY MR. PIFKO:  
06: Q. And then there's -- at the  
07: bottom of Page 5 it says, "Shipment  
08: decisions. Decisions to ship an order  
09: 'of interest' should be made by a person  
10: specifically authorized to conduct an  
11: investigation and release the order."  
12: Do you see that?  
13: A. I do see that.  
14: Q. Then it's got, on Page 6,  
15: four decision options. Do you remember  
16: when we looked at the slide deck from the  
17: January 31st, 2008, meeting it talked  
18: about the four decisions on shipment. Do  
19: you remember that?  
20: A. I do.  
21: Q. And so here we have the four  
22: decisions on shipment.  
23: Do you see that?  
24: A. I do.

00174

01: yes.  
02: Q. There's another section here  
03: about filing reports with the DEA. It  
04: talks about a month-end notification.  
05: And then it says, "Delete this entire  
06: section."  
07: Agree?  
08: A. That's what it says, yes.  
09: Q. Okay. And as we read in the  
10: other documents, an order needs to be  
11: reported at the time it's identified as  
12: being suspicious. That's consistent with  
13: your understanding, correct?  
14: MR. WEINSTEIN: Objection to  
15: form, foundation, scope.  
16: THE WITNESS: Again, I am  
17: not sure where -- that's my  
18: understanding of what they -- was  
19: being discussed, yes.  
20: BY MR. PIFKO:  
21: Q. That is your understanding  
22: of what was being discussed. I didn't  
23: understand your answer.  
24: A. So your question -- if you

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00175

01: would restate the question?  
02: Q. Yeah, I was -- I was saying  
03: if you remember, we looked at some of the  
04: other documents and they talk about how  
05: you need to report an order at the time  
06: you identify it as suspicious. And this  
07: is saying to delete the idea of a monthly  
08: notification to DEA.  
09: So you agree that that's  
10: consistent with the idea that you need to  
11: report it when you know it, correct?  
12: MR. WEINSTEIN: Objection to  
13: form, foundation, and scope.  
14: THE WITNESS: Again, this  
15: has to do with the -- the  
16: notification to DEA, month -- on a  
17: monthly basis. I'm not sure that  
18: refers directly to the suspicious  
19: order, per se.  
20: BY MR. PIFKO:  
21: Q. Well, it's under the heading  
22: "File Suspicious Order Reports With the  
23: DEA," Section 4.  
24: Do you see that?

00177

01: MR. WEINSTEIN: Objection to  
02: form.  
03: THE WITNESS: Where -- which  
04: section are you in?  
05: BY MR. PIFKO:  
06: Q. In the section --  
07: A. Oh yes. In the top section,  
08: yes.  
09: Q. Do you see that?  
10: A. "DEA office is recommending  
11: to meet with the requirement to notify  
12: when discovered unless DEA provides other  
13: direction," yes.  
14: Q. Let's go to Page 7. There  
15: is a Heading 5, "Discussing Training and  
16: Standard Operating Procedures."  
17: Do you see that?  
18: A. I do.  
19: Q. And one of the things it  
20: says there, at the bottom of that  
21: training section is, "Training of  
22: associates who are authorized to review,  
23: stop, release an order, should be  
24: extensive and there should be backup

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00176

01: A. Right, but this has to do  
02: with month-end DEA notification.  
03: Q. Right. But it's saying to  
04: delete the month-end. We're not going to  
05: do that. Agree?  
06: MR. WEINSTEIN: Objection to  
07: form.  
08: THE WITNESS: I don't know  
09: that we're not going to do that.  
10: It just says delete that section.  
11: I don't know what that -- what  
12: that meant.  
13: BY MR. PIFKO:  
14: Q. Well, the section above  
15: says, "Immediate DEA notification."  
16: Do you see that?  
17: A. I do see that.  
18: Q. Okay. And then it's got a  
19: section under there, it says, "DEA" -- it  
20: says, "To meet the requirement," it says,  
21: "When discovered."  
22: Do you see that in quotes?  
23: MS. CHARLES: Objection to  
24: form.

00178

01: training to cover the times when the  
02: primary associate will not be available,  
03: i.e., vacations, sick, et cetera?"  
04: Did I read that correctly?  
05: A. You did.  
06: Q. And that was an attribute of  
07: the -- these best practices or industry  
08: compliance guidelines, correct?  
09: MR. WEINSTEIN: Objection to  
10: form.  
11: THE WITNESS: I will note --  
12: I will note that this is in a  
13: different font and I'm not sure if  
14: this was part of the final  
15: document or not.  
16: BY MR. PIFKO:  
17: Q. Okay. We'll get there.  
18: And then it's got additional  
19: recommendations.  
20: "Note: Should we also  
21: consider including any or all of the  
22: following?"  
23: Do you see that?  
24: A. I do.

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00179

01: Q. So some of these other  
02: things that are being considered are  
03: whether periodic audits should be  
04: conducted by the independent auditor,  
05: correct?  
06: A. That's what it says, yes.  
07: Q. Should -- should the  
08: industry support a customer accreditation  
09: program?  
10: A. Accreditation, yes.  
11: Q. Identify an individual as a  
12: DEA liaison for reporting suspicious  
13: orders; is that correct?  
14: A. That's what it says, yes.  
15: Q. Retain a list of  
16: questionable registrants. Maintain a  
17: list of do-not-ship accounts.  
18: Do you see that?  
19: A. I do see that.  
20: Q. That was something that was  
21: being discussed as being included?  
22: A. Again, different fonts. But  
23: it's part of this document, yes.  
24: Q. Have you seen the final

00181

01: BY MR. PIFKO:  
02: Q. I'm handing you what's  
03: marked as Exhibit 18.  
04: (Document marked for  
05: identification as Exhibit  
06: HDA-Kelly-18.)  
07: BY MR. PIFKO:  
08: Q. It's a three-page document,  
09: Bates labeled HDA\_MDL\_000217851 through  
10: 853.  
11: Just take a moment to review  
12: this and let me know when you're done.  
13: A. Okay.  
14: Q. If you recall from  
15: Exhibit 14, we talked about how the  
16: consultant and Ms. Ducca worked on the  
17: draft, correct?  
18: A. Yes.  
19: Q. And here in Exhibit 18,  
20: Mr. Wilson, on February 6, 2008, is  
21: sending her what he calls a discussion  
22: intro, in the subject of the e-mail.  
23: And he says, "Here is the  
24: discussion header. I used the same

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00180

01: industry compliance guidelines?  
02: A. Yes.  
03: Q. So the document we just  
04: discussed, Exhibit 17, it's just the  
05: nitty-gritty, the details of the  
06: guidelines, correct?  
07: MR. WEINSTEIN: Objection to  
08: form.  
09: THE WITNESS: It's labeled  
10: as a discussion draft.  
11: BY MR. PIFKO:  
12: Q. All I'm getting at is,  
13: the -- the final draft has some  
14: introductory explanatory language,  
15: correct, the background about them,  
16: correct, that's not in the discussion  
17: draft, right?  
18: A. Yes. There's addition --  
19: and, again, I'm not sure what made it  
20: from the discussion draft into the final  
21: draft unless I was able to compare them  
22: next to one another.  
23: MS. CHARLES: Object to the  
24: form of that question.

00182

01: language you did on the draft. I will  
02: call you tomorrow around 9:00 a.m. your  
03: time."  
04: Do you see that?  
05: A. Yes.  
06: Q. So he's sending her some  
07: language that they discussed together,  
08: agree?  
09: MR. WEINSTEIN: Objection to  
10: form.  
11: THE WITNESS: Again, yes.  
12: BY MR. PIFKO:  
13: Q. And so as we discussed,  
14: the -- the final draft has some  
15: background language, history, et cetera,  
16: correct?  
17: A. It does.  
18: Q. Okay. And so this is a  
19: first draft of that, it says, if you look  
20: on the second page, first draft.  
21: Do you see that?  
22: A. I see that.  
23: Q. And then it's got a heading  
24: history. And it talks about 1970

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00183

01: Congress enacted the Controlled  
02: Substances Act.  
03: Do you see that?  
04: A. Yes.  
05: Q. Okay. At the bottom of that  
06: page there's a section here, it says, "Up  
07: until now, DEA has interpreted this  
08: section to require distributors to design  
09: and operate a system to identify and  
10: report suspicious orders, based on the  
11: regulation's definition of suspicious."  
12: Did I read that correctly?  
13: A. You did.  
14: Q. The next page says,  
15: "Recently, and without any due process  
16: for rule changes, DEA has expanded the  
17: definition of suspicious orders to  
18: include those that the registrant may  
19: have reason to believe the order will be  
20: diverted."  
21: Do you see that?  
22: A. I do.  
23: Q. Did I read that correctly?  
24: A. You did.

00185

01: says, "DEA seems to have taken the  
02: position that if the registrant did not  
03: know their customer was diverting,  
04: they" -- in all caps -- "should have  
05: known and have attached severe penalties  
06: to not knowing. That is the purpose of  
07: the following discussion points regarding  
08: knowing your customer, identifying and  
09: reporting suspicious order of controlled  
10: substances, and training everyone who  
11: comes into contact with controlled  
12: substances."  
13: Did I read that correctly?  
14: A. You did.  
15: Q. So at this time you agree  
16: that it's saying the discussion points,  
17: the attributes that we discussed in the  
18: prior draft, those are all designed at  
19: this idea of addressing the DEA's concern  
20: that registrants should know if their  
21: customers are diverting controlled  
22: substances, correct?  
23: MR. WEINSTEIN: Objection to  
24: form, foundation, and scope.

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00184

01: Q. Then it says, "In three  
02: public statements to congressional  
03: committees on December 13, 2005; July 26,  
04: 2006; and September 18, 2007, the DEA  
05: administrator has spoken about, quote,  
06: the growing problem of diversion and  
07: abuse of controlled pharmaceuticals  
08: continues to be one of the top priorities  
09: of the Drug Enforcement Administration."  
10: "We have also used our  
11: regulatory authority to take action  
12: against DEA registrants found to be in  
13: violation of regulatory requirements  
14: under the Controlled Substance Act.  
15: "Through regulatory  
16: authority, DEA has subjected registrants  
17: to significant civil fines, licensing  
18: restrictions or even suspended  
19: registration. Such civil remedies have  
20: proven to be an effective deterrent to  
21: potential violators."  
22: Did I read that correctly?  
23: A. You did.  
24: Q. And then the last paragraph

00186

01: THE WITNESS: That's  
02: correct. That's what I understand  
03: it to mean, yes.  
04: (Document marked for  
05: identification as Exhibit  
06: HDA-Kelly-19.)  
07: BY MR. PIFKO:  
08: Q. I'm handing you what's  
09: marked as Exhibit 19. This is another  
10: e-mail from Ms. Ducca Bates-labeled  
11: HDA\_MDL\_000148603 to 148633.  
12: Take a moment to review it.  
13: It attaches a revised draft of the  
14: document we looked at in Exhibit 17.  
15: MR. STEWART: Can we take a  
16: break while he reads the document?  
17: BY MR. PIFKO:  
18: Q. I think he's done.  
19: A. Yeah, I was trying to  
20: determine what the -- so this is the  
21: accepted changes versus --  
22: Q. I'll walk you -- I'll walk  
23: you through it here.  
24: A. Okay.

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00187

01: Q. Okay. So if you'll recall  
02: in Exhibit 14, Ms. Ducca talks about  
03: scheduling call February 7th to have a  
04: further discussion about the guidelines.  
05: Do you see that? Or do you  
06: recall that?  
07: And then this Exhibit 19 is  
08: her sending out attachments for this call  
09: that's going to happen on February 7th,  
10: agree?  
11: A. Yes.  
12: Q. And what we're seeing here  
13: is a red line against the version that we  
14: reviewed in Exhibit 17. That's actually  
15: a clean version she attaches, and a red  
16: line version. The red line starts at  
17: 148619, agree?  
18: A. Yes.  
19: Q. Okay. So then, you see this  
20: draft, it's -- the heading on this draft  
21: is Version 8, post 1/31/08. This is  
22: distinguishing that it's after that  
23: January 31, 2008, meeting, correct?  
24: A. Yes.

00189

01: you're seeing in the introduction and  
02: history section in Exhibit 19. That  
03: paragraph is not in there, correct?  
04: A. It does not appear to be.  
05: Q. And then the section,  
06: "Recently, without any due process for  
07: rule changes," that whole paragraph in  
08: Exhibit 18 isn't in here either, correct?  
09: It's not in Exhibit 19, correct?  
10: A. It does not appear to be.  
11: Q. Okay. And so let's look at  
12: some of the language that's added here  
13: from the January 31st, 2008, draft that  
14: we reviewed in Exhibit 17.  
15: First, in the introduction.  
16: Let me know when you're there.  
17: A. We're on the second --  
18: Q. If you want to use the red  
19: line, you can, which starts on 148619.  
20: A. Okay.  
21: Q. Are you there?  
22: A. I -- yes.  
23: Q. This allows us to see what's  
24: added from the prior draft that was in

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00188

01: Q. And now this draft has some  
02: of the introductory background language  
03: that we discussed in Exhibit 18, correct?  
04: A. Yes, with the addition of  
05: some additional information.  
06: Q. Right. So not all of the  
07: language that we discussed in Exhibit 18  
08: made it into this draft, correct?  
09: A. That's -- yes, from what I  
10: could tell.  
11: Q. For example, there was that  
12: paragraph, "Up until now DEA has  
13: interpreted this section that required  
14: distributors to design and operate a  
15: system to identify and report suspicious  
16: orders."  
17: Do you remember that  
18: discussion? That's not in here, correct?  
19: A. What -- what version are you  
20: looking at?  
21: Q. If you have -- if you want  
22: to open Exhibit 18 up --  
23: A. Okay. I'm sorry.  
24: Q. -- and compare it to what

00190

01: Exhibit 17, agree?  
02: A. Yes.  
03: Q. And so all of this language,  
04: the introduction, history, distribution  
05: industry, commitment to securing the  
06: supply of controlled substances, that's  
07: all new, correct?  
08: A. From the version in 17?  
09: Q. Yeah.  
10: A. Exhibit 17? Yes.  
11: Q. Okay. And so one of the  
12: things in the first paragraph, it says,  
13: is that, at the bottom of that first full  
14: paragraph, it's talking about these  
15: guidelines. It says, "They have been  
16: prepared in recognition of the growing  
17: problem of misuse of controlled  
18: substances and the key role distributors  
19: play within the prescription drug supply  
20: chain."  
21: Did I read that correctly?  
22: A. You did.  
23: Q. Okay. And so is that  
24: consistent with what your understanding

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00191

01: of the background of how these were  
02: prepared?  
03: MR. WEINSTEIN: Objection to  
04: form.

05: THE WITNESS: Yes, that's  
06: what I understand it to be.

07: BY MR. PIFKO:

08: Q. And HDMA and its members  
09: recognized that there was a growing  
10: problem of misuse of controlled  
11: substances at this time?

12: MR. WEINSTEIN: Objection to  
13: form. Foundation. Scope.

14: THE WITNESS: That's what we  
15: stated here in this introduction.

16: BY MR. PIFKO:

17: Q. And the role -- and the key  
18: role that distributors play within the  
19: prescription drug supply chain, correct?

20: MR. WEINSTEIN: Same  
21: objections.

22: THE WITNESS: Again, it's  
23: stated here in the introduction.

24: BY MR. PIFKO:

00193

01: level of assurance that those who  
02: purchase controlled substances from  
03: wholesale distributors intend them to be  
04: used for legitimate and legally

05: acceptable patient needs."

06: Did I read that correctly?

07: A. You did.

08: Q. "In other words, with such  
09: due diligence, it is possible to reduce  
10: the probability that controlled  
11: substances will reach locations within  
12: the supply chain for which they are not  
13: intended."

14: Did I read that correctly?

15: A. You did.

16: Q. And so HDMA and its members  
17: recognized this to be true at this time  
18: as well, correct?

19: MR. WEINSTEIN: Objection to  
20: form, foundation, scope.

21: THE WITNESS: It's what's

22: stipulated here in this

23: introduction, yes.

24: BY MR. PIFKO:

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p. 00193

00192

01: Q. And then in the next  
02: paragraph it says, "While drug wholesale  
03: distributors, like all nongovernmental  
04: entities, do not have investigative  
05: powers and resources to guarantee that  
06: certain products will not reach illicit  
07: or illegal markets, they are uniquely  
08: situated to perform due diligence in  
09: order to help support the security of the  
10: controlled substances distribution  
11: system."

12: Did I read that correctly?

13: A. You did.

14: Q. That was another thing that

15: HDA and its members recognized at this  
16: time, correct?

17: MR. WEINSTEIN: Objection to  
18: form. Foundation. Scope.

19: THE WITNESS: And included

20: it in this introduction, yes.

21: BY MR. PIFKO:

22: Q. It then says, "Rigorous" --  
23: in the next paragraph, "Rigorous due

24: diligence can aid in providing a greater

00194

01: Q. So let's go to the second  
02: page. There's a heading, "Distribution  
03: Industry Commitment to Securing the  
04: Supply of Controlled Substances."

05: Do you see that?

06: A. I do.

07: Q. It says in that paragraph,  
08: partway through the first sentence,  
09: "Recent concerns about the potential  
10: misuse of controlled substances has  
11: elevated their awareness and that of the  
12: DEA and the public, to the need for  
13: greater rigor in evaluating the purchase  
14: orders of such" -- "for such products."

15: Did I read that correctly?

16: A. Yes.

17: MS. MACKAY: Object to the  
18: form.

19: BY MR. PIFKO:

20: Q. And the HDA and its members  
21: understood that to be true at this time,  
22: correct?

23: MR. WEINSTEIN: Objection to  
24: form, foundation, and scope.

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p. 00194

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00195

01: THE WITNESS: That's what's  
02: stated here in this document, yes.  
03: BY MR. PIFKO:  
04: Q. Then in the next paragraph  
05: it says, second sentence, "We are  
06: confident that implementation of these  
07: guidelines will aid in the appropriate  
08: distribution of controlled substances to  
09: supply chain partners involved in the  
10: legitimate dispensing of these important  
11: products to patients they serve."  
12: Did I read that correctly?  
13: A. You did.  
14: Q. And HDMA and its members  
15: understood that to be true at this time,  
16: correct?  
17: MR. CRAWFORD: Objection to  
18: form.  
19: MR. WEINSTEIN: Objection to  
20: form, foundation, and scope.  
21: THE WITNESS: They  
22: understood that -- that these were  
23: guidelines that could help in  
24: addressing prescription drug

00197

01: there.  
02: A. Page 7? I'm there.  
03: Q. Yeah, okay. And it's got  
04: two options.  
05: Do you see that?  
06: A. I do.  
07: Q. And it's talking about  
08: whether, if there's a suspicious order, a  
09: distributor should stop the whole order  
10: or they could ship a portion of the  
11: order. Do you agree that's what it's  
12: discussing.  
13: MS. ROLLINS: Object to the  
14: form.  
15: THE WITNESS: Where -- where  
16: are you reading?  
17: BY MR. PIFKO:  
18: Q. Well, there's two options  
19: Option 1 stop shipments of the individual  
20: drug code product that is an order of  
21: interest.  
22: A. I see that, yes.  
23: Q. Or then it's saying  
24: Option 2: "Distributors may ship a

p. 00195

p. 00197

00196

01: diversion, yes.  
02: BY MR. PIFKO:  
03: Q. And HDMA and its members put  
04: this -- this language together, correct?  
05: MR. WEINSTEIN: Objection to  
06: form.  
07: THE WITNESS: HDMA and its  
08: distributor members, yes.  
09: BY MR. PIFKO:  
10: Q. And all the language we've  
11: been discussing, correct?  
12: MR. WEINSTEIN: Objection to  
13: form.  
14: MS. MACKAY: Foundation.  
15: THE WITNESS: Yes, the  
16: language that is before us, that  
17: we're looking at is prepared by  
18: HDMA and HDMA member companies,  
19: distributor member companies.  
20: BY MR. PIFKO:  
21: Q. There's another section a  
22: few pages in, "Stop Shipments of an Order  
23: of Interest."  
24: Let me know when you're

00198

01: portion of the entire individual drug  
02: code product that is an order of  
03: interest."  
04: Do you see that?  
05: A. I do see that, yes.  
06: Q. So there was a discussion at  
07: this time as to which of those options  
08: was going to be included in this -- into  
09: the final draft, correct?  
10: MS. CHARLES: Objection to  
11: form.  
12: THE WITNESS: I don't  
13: know -- I don't know what the  
14: intention was for including the  
15: options, if that was a discussion  
16: about including one or the other  
17: or leaving both.  
18: MR. WEINSTEIN: Mark, we've  
19: been going about an hour and a  
20: half. If there's a good point  
21: for --  
22: MR. PIFKO: Yeah, let me  
23: just hand him this exhibit. I'm  
24: just going to address that topic

p. 00196

p. 00198

00199

01: and then we can take a break.  
02: MR. WEINSTEIN: A few more  
03: minutes?  
04: THE WITNESS: Yep.  
05: (Document marked for  
06: identification as Exhibit  
07: HDA-Kelly-20.)  
08: BY MR. PIFKO:  
09: Q. I'm handing you what's  
10: marked as Exhibit 20. For the record,  
11: it's a document Bates-labeled  
12: HDA\_MDL\_000213058 through 213077. It's a  
13: PowerPoint from the HDA government public  
14: policy council dated February 12, 2008,  
15: titled, "HDMA-DEA Suspicious Orders 'best  
16: Practices'"  
17: Let me know when you are  
18: ready.  
19: A. Okay.  
20: Q. So you recall when we first  
21: discussed the hiring of Mr. Wilson and  
22: the decision that HDMA was going to put  
23: out these best practices, that ultimately  
24: they have to get approved by the board,

00201

01: Q. Then we see a calendar on  
02: Slide 3 that's got the different events.  
03: This is consistent with what we've been  
04: discussing and your understanding of the  
05: process, correct?  
06: There was a meeting on  
07: January 31, 2008, and we looked at --  
08: Exhibit 19 was the revised draft provided  
09: to the regulatory affairs committee on  
10: February 7th for them to review. Here  
11: it's got the 8th.  
12: And then this is -- this  
13: meeting on February 12, 2008, for the  
14: government public policy council to  
15: review?  
16: A. Yes.  
17: Q. Agree?  
18: A. Yes.  
19: Q. Some of these slides are  
20: similar to the presentation we saw on --  
21: on January 31st that we went over on  
22: Exhibit 16, correct?  
23: MS. CHARLES: Objection to the  
24: form.

p. 00199

p. 00201

00200

01: correct?  
02: A. That's correct.  
03: Q. And so this is a meeting  
04: that's discussing getting to --  
05: ultimately getting to approval of the  
06: guidelines, correct?  
07: A. Correct.  
08: Q. And we see on the second  
09: page it says agree -- "Goals: Agree upon  
10: final draft of best practices for  
11: executive committee review."  
12: Do you see that?  
13: A. Yes.  
14: Q. And then it says, "Resolve  
15: partial shipment issue."  
16: Do you see that?  
17: A. Yes.  
18: Q. And that's the issue we were  
19: discussing in Exhibit 19 where there's  
20: the two options. Agree?  
21: MS. CHARLES: Objection to  
22: form.  
23: THE WITNESS: Yes.  
24: BY MR. PIFKO:

00202

01: THE WITNESS: Yeah, I  
02: don't -- I don't believe there was  
03: a timeline, but yes, similar in  
04: scope. Yes.  
05: BY MR. PIFKO:  
06: Q. Discussion of legal -- yeah,  
07: there's like just legal discussions about  
08: the requirements and the Rannazzisi  
09: letters. Agree?  
10: A. Agree.  
11: MS. ROLLINS: Objection to  
12: form.  
13: BY MR. PIFKO:  
14: Q. Okay. So then I want to  
15: direct your attention to Slide 11, it's a  
16: slide headed "Next Steps."  
17: Do you see that?  
18: A. I do.  
19: Q. So second bullet point --  
20: well, first bullet point is that the  
21: executive committee is going to review  
22: them on February 22nd, agree?  
23: A. Yes.  
24: Q. And then another next step

p. 00200

p. 00202

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00203

01: is that we're going to continue pharmacy  
02: association/pain coalition discussions,  
03: agree?  
04: A. That's what it says, yes.  
05: Q. And so there was going to be  
06: an effort to continue discussing these  
07: with the Pain Care Foundation as we  
08: discussed before, correct?  
09: MR. WEINSTEIN: Objection to  
10: form.  
11: MS. CHARLES: Objection to  
12: form.  
13: MR. WEINSTEIN: Foundation.  
14: THE WITNESS: That's what it  
15: says, yes.  
16: BY MR. PIFKO:  
17: Q. Do you have any reason to  
18: dispute that it happened?  
19: A. I do not.  
20: Q. Then another next step is  
21: going to request a meeting with the DEA  
22: acting administrator. You recall that we  
23: discussed that when we first looked at  
24: the scope of work for this, correct?

00205

01: diligence, know your customer and not  
02: shipping suspicious orders, correct?  
03: MR. WEINSTEIN: Objection to  
04: form.  
05: MS. ROLLINS: Objection to  
06: form.  
07: THE WITNESS: I'm sorry.  
08: With --  
09: BY MR. PIFKO:  
10: Q. With respect to -- you said,  
11: "The concept was basically to broach  
12: these as a potential solution to due  
13: diligence." But I'm saying, also know  
14: your customer and the idea of not  
15: shipping suspicious orders, correct?  
16: A. Right. That would all be  
17: included in due diligence, yes.  
18: Q. Okay. Slide 16. It's got  
19: some key points from the January 31st  
20: meeting. Are you there?  
21: A. I am.  
22: Q. Okay. First one is -- it  
23: says that, "Implementing the best  
24: practices will expand distributors'

p. 00203

p. 00205

00204

01: A. Yes.  
02: Q. And then one point of  
03: discussion was to request DEA endorsement  
04: of the best practices as a safe harbor.  
05: Do you see that?  
06: A. I do.  
07: Q. You understood that there  
08: was going to be a request to the DEA that  
09: if people implemented these, they would  
10: have a safe harbor with respect to  
11: diversion control compliance?  
12: MS. MACKAY: Objection to  
13: form.  
14: THE WITNESS: Again, I  
15: think -- I think -- yeah, the  
16: concept was to basically broach  
17: these as a potential solution to  
18: due diligence under the  
19: expectations of DEA. I don't know  
20: if we officially requested their  
21: endorsement. We did show them the  
22: completed guidelines.  
23: BY MR. PIFKO:  
24: Q. In addition to due

00206

01: efforts considerably." And considerably  
02: is in italics.  
03: Do you see that?  
04: A. I do.  
05: Q. Okay. So if you were going  
06: to implement these, it would be a  
07: considerable effort, correct?  
08: MR. WEINSTEIN: Objection to  
09: form. Foundation.  
10: THE WITNESS: It would be --  
11: yes. That's what I understand it  
12: to mean.  
13: BY MR. PIFKO:  
14: Q. And then it says,  
15: "Inevitably impacts customers, may be  
16: significant."  
17: Do you see that?  
18: A. I do see that.  
19: Q. So there could be a  
20: significant impact on customers from  
21: implementing these, correct?  
22: MR. WEINSTEIN: Objection to  
23: form. Foundation. Scope.  
24: THE WITNESS: That's what I

p. 00204

p. 00206

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00207

01: understand it to mean, yes.  
02: BY MR. PIFKO:  
03: Q. And go to Slide 17. This is  
04: a discussion of that partial shipment  
05: option that we looked at that was in the  
06: draft in Exhibit 19, agree?  
07: A. Yes.  
08: Q. And so it's got some -- it  
09: identifies the issue of what should be  
10: done. And then it's got voting, agree?  
11: MS. CHARLES: Objection to  
12: form.  
13: THE WITNESS: That's, I  
14: guess, what it appears to have.  
15: I'm not sure if that's voting  
16: within the regulatory affairs  
17: committee.  
18: BY MR. PIFKO:  
19: Q. But there's some voting, by  
20: some constituent within HDA, correct?  
21: A. This appears to indicate  
22: that, yes.  
23: MS. CHARLES: Objection to  
24: form.

00209

01: form. Foundation.  
02: THE WITNESS: That's what it  
03: says, yes.  
04: BY MR. PIFKO:  
05: Q. A con is that DEA  
06: correspondence/interpretation is do not  
07: support this practice, agree?  
08: MR. WEINSTEIN: Objection to  
09: form.  
10: THE WITNESS: That's what it  
11: says, yes.  
12: MR. PIFKO: We can take a  
13: break.  
14: THE VIDEOGRAPHER: The time  
15: is 12:06 p.m. We are going off  
16: the record.  
17: - - -  
18: (Lunch break.)  
19: - - -  
20: A F T E R N O O N S E S S I O N  
21: - - -  
22: THE VIDEOGRAPHER: The time  
23: is 12:44 p.m. We are back on the  
24: record.

p. 00207

p. 00209

00208

01: BY MR. PIFKO:  
02: Q. And it says, "If a specific  
03: drug code product order is potentially  
04: suspicious, should the distributor be  
05: able to ship part of the order for that  
06: particular product prior to further  
07: evaluation?"  
08: That's what it says,  
09: correct?  
10: A. That's what it says, yes.  
11: Q. And then it says seven are  
12: in favor, three opposed, one abstained,  
13: and one was absent, agree?  
14: A. That's what it says.  
15: MR. WEINSTEIN: Objection to  
16: form.  
17: BY MR. PIFKO:  
18: Q. And then it's got pros and  
19: cons of adopting that approach, agree?  
20: A. That's what it lists, yes.  
21: Q. One of the pros is it's  
22: consistent with the current practice for  
23: many distributors, agree?  
24: MR. WEINSTEIN: Objection to

00210

01: - - -  
02: EXAMINATION (Cont'd.)  
03: - - -  
04: BY MR. PIFKO:  
05: Q. I'm handing you what's  
06: marked as Exhibit 21.  
07: (Document marked for  
08: identification as Exhibit  
09: HDA-Kelly-21.)  
10: BY MR. PIFKO:  
11: Q. It's another series of  
12: e-mails from Anita Ducca dated March 4th,  
13: 2008, attaching another version of the  
14: guidelines, Bates-labeled  
15: CAH\_MDL2804\_01521412 through 1469.  
16: There's another red line of  
17: this draft against the draft that we  
18: looked at in Exhibit 19. I'm not going  
19: to ask you any questions about it. But  
20: you can review it. But in the interest  
21: of time, I was just want to direct your  
22: attention to the first page of  
23: Exhibit 21.  
24: A. That's all we're going to

p. 00208

p. 00210

00211  
01: be?  
02: Q. Yeah.  
03: A. Do you want me to read the  
04: back end of it?  
05: Q. Sure. I'm not going to ask  
06: you about that either. Just the e-mail  
07: on the front.  
08: A. I've read the top sheet.  
09: Q. Okay. So Exhibit 21 is  
10: Anita Ducca sending to the regulatory  
11: affairs committee members another draft  
12: of the suspicious orders best practices,  
13: agree?

14: MR. WEINSTEIN: Objection to  
15: form.  
16: THE WITNESS: Yes. I think  
17: that's -- that's what it entails.  
18: And with kind of a changing of the  
19: name to the practice guidelines,  
20: which was not the final name of  
21: the document, but...  
22: BY MR. PIFKO:  
23: Q. Right, so she says, "I've  
24: attached a copy of the very latest

00213  
01: know that they were vetted with various  
02: external groups to determine how they  
03: should be named and packaged and  
04: presented.  
05: Q. Do you know what other  
06: external groups?  
07: A. Other than -- I mean,  
08: external groups as far as within the  
09: organization. So our government affairs  
10: committees, our communications  
11: committees, legal counsel, outside  
12: counsel.  
13: Q. And so this says, "Change  
14: them to recommended practice guidelines,"  
15: but ultimately they ended up being called  
16: industry compliance guidelines, correct?  
17: A. Correct.  
18: Q. Do you know if there were  
19: any other iterations of what they would  
20: be called in between this and the final  
21: name?  
22: A. I -- I do not know. I  
23: think -- again, I think the practice -- I  
24: mean I think we wanted to stay away from

p. 00211

p. 00213

00212  
01: version of the draft suspicious order  
02: practices. The executive committee  
03: approved these."  
04: Do you see that?  
05: A. Yes.  
06: Q. The executive committee  
07: approved the draft she attaches in this  
08: document, correct?  
09: A. That's what I understand it  
10: to mean, yes.  
11: Q. And then it says, "Also, we  
12: have made some changes, mostly regarding  
13: wording and formatting and included  
14: recommendations by our outside counsel  
15: and our communications department,  
16: including a suggestion to re-name them  
17: 'recommended practice guidelines.'"  
18: Do you see that?  
19: A. I do.  
20: Q. So the outside counsel or  
21: communications department recommended  
22: that you re-name them?  
23: A. Again, I don't know who  
24: recommended exactly renaming them. I do

00214  
01: basically establishing anything that said  
02: best practices or standards because we  
03: are not a standard setting organization.  
04: We can't compel our members  
05: to, you know, adopt these best practices,  
06: per se. So they are guidelines. They  
07: are voluntary guidelines.  
08: Q. So then, this also talks  
09: about how there's going to be a meeting  
10: with Mark Caverly. He's from the DEA,  
11: correct?  
12: A. Correct.  
13: Q. And again, this is  
14: consistent with the overall strategy that  
15: we saw in the earlier documents that was  
16: designed in 2007 where you're going to  
17: draft these, get industry to all agree on  
18: the language, and then have a meeting  
19: with DEA to discuss them, correct?  
20: MR. WEINSTEIN: Objection to  
21: form.  
22: THE WITNESS: Again, get  
23: our -- get our members that were  
24: participating in that process to

p. 00212

p. 00214

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00215

01: agree on them. And then basically  
02: vet them with the DEA to see if  
03: they had any concerns with the  
04: scope of the -- of the guidelines.  
05: (Document marked for  
06: identification as Exhibit  
07: HDA-Kelly-22.)  
08: BY MR. PIFKO:

09: Q. I'm handing you what's  
10: marked as Exhibit 22. It's an e-mail  
11: from HDA's Kristen Freitas dated  
12: Thursday, March 20, 2008. Due to some  
13: sort of way the document was produced,  
14: there's a lot of gibberish and blank  
15: pages, but the substance can be distilled  
16: down to four pages.  
17: But for the record, it's  
18: Bates-labeled ANDA\_OPIOIDS\_MDL\_0000157358  
19: to 157473.  
20: For the record, take a  
21: minute to review it and let me know when  
22: you're done.  
23: The substantive discussion  
24: starts at 157380, it ends at 83. I think

00217

01: that's under your purview in your current  
02: position?  
03: A. It is.  
04: Q. Okay. So Kristen Freitas  
05: reports to you?  
06: A. Up through me, yes. I'm the  
07: head of the department. She reports  
08: directly to our general counsel.

09: Q. Okay. So at this time,  
10: she's talking about some other aspects of  
11: the strategy to, as we talked about in  
12: Exhibit 3, address the executive  
13: committee's concerns about recent DEA  
14: activities to involve wholesale  
15: distributors in efforts to prevent  
16: diversion. Agree?  
17: MR. WEINSTEIN: Objection to  
18: form.  
19: THE WITNESS: I'm sorry. So  
20: you -- you --  
21: BY MR. PIFKO:  
22: Q. This is a furtherance of the  
23: overall strategy that we talked about  
24: that was starting to be implemented in

p. 00215

p. 00217

00216

01: that's where you were.  
02: A. 8383?  
03: Q. Yeah.  
04: A. 157383? Okay.  
05: Q. So my first question is, who  
06: is Kristen Freitas?  
07: A. Kristen Freitas is currently  
08: now the vice president of federal  
09: government affairs for HDA, then HDMA.  
10: She was then probably a manager or a  
11: director.  
12: Q. It says here on her  
13: signature on the second page, associate  
14: director.  
15: A. Associate director.  
16: Q. What's federal government  
17: affairs do?  
18: A. Federal government affairs  
19: is tasked primarily with the interface  
20: with Congress. The HDA segment of the  
21: government affairs department that deals  
22: directly with Congress, anything that  
23: happens on the Hill.  
24: Q. Is that a -- something

00218

01: Exhibit 3, which derives from the  
02: executive committee's concerns about  
03: recent DEA activities to involve  
04: wholesale distributors in efforts to  
05: prevent diversion. Do you agree?  
06: MR. WEINSTEIN: Objection to  
07: form.  
08: THE WITNESS: That should --  
09: yes. I would agree it is part of  
10: that process.  
11: BY MR. PIFKO:  
12: Q. Okay. So then she says  
13: here, "DEA - as we discussed on the  
14: federal government affairs committee call  
15: on Monday, HDMA staff have developed a  
16: confidential draft political strategy to  
17: address some of the issues related to DEA  
18: and suspicious orders. As the document  
19: states, many of the tactics and messaging  
20: hinge on the outcome of the DEA meeting  
21: where we will" -- "we will present our  
22: recommended industry compliance  
23: guideline."  
24: Did I read that correctly?

p. 00216

p. 00218

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00219

01: A. You did.  
02: Q. Okay. So it was understood  
03: within HDA and its members that,  
04: depending on this meeting where the  
05: guidelines were shared with the DEA, that  
06: would shape how further strategies were  
07: implemented, agree?

08: MR. WEINSTEIN: Objection to  
09: form. Foundation.

10: THE WITNESS: I would agree,  
11: yes.

12: BY MR. PIFKO:

13: Q. So then we see, if you go to  
14: 157380, there's a discussion of various  
15: tactics that are going to be part of "the  
16: HDMA Hill DEA strategy."

17: Do you see that?

18: A. I do.

19: Q. Okay. Tactic Number 1 is,  
20: "Complete and present recommended  
21: industry compliance guidelines to DEA  
22: general counsel."

23: Do you see that?

24: A. Yes.

00221

01: A. Again, I think it had to do  
02: with, and the timing of this would have  
03: been -- if this is after the -- the  
04: hearing. This was on March 20th.  
05: Again, I think it was  
06: basically when FDA or DEA on an annual  
07: basis goes before the appropriation  
08: committee to discuss their budget, that  
09: if there were concerns or questions about  
10: their perspective on our guidelines or  
11: their suspicious order monitoring  
12: tactics, that we provide some feedback to  
13: the appropriation members so they could  
14: ask for further clarification from the  
15: administrator while she was there  
16: testifying.

17: Q. Okay. And so you drafted,  
18: on behalf of your members, potential  
19: questions to be asked by members of  
20: Congress to ask the DEA, correct?

21: MR. WEINSTEIN: Objection to  
22: form.

23: THE WITNESS: That's what I

24: understand these to be, yes.

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p. 00221

00220

01: Q. Okay. You agree that's the  
02: first tactic mentioned here?

03: A. That is, yes.

04: Q. And then it says, "Status:  
05: Request to be made the week of  
06: March 17th."

07: Agree?

08: A. That's what it says, yes.

09: Q. And like we just saw in the  
10: prior department, "The discussion and  
11: outcome of this meeting will be critical  
12: in driving all further tactics and  
13: messaging."

14: Agree?

15: A. That's what it says, yes.

16: Q. Then it says, "Brief House  
17: appropriation subcommittee members who  
18: participated in the March 12th DEA budget  
19: justification hearing. Seek questions to  
20: be asked for the record."

21: Do you see that?

22: A. Yes.

23: Q. Do you have an understanding  
24: about what that was about?

00222

01: BY MR. PIFKO:

02: Q. And that starts on 157382  
03: and goes to 383, correct?  
04: A. Correct.  
05: Q. Okay. Tactic 3 is, "Brief  
06: Senate appropriation subcommittee members  
07: in advance of DEA budget justification  
08: hearing. Seek commitment to ask  
09: questions of DEA administrator."

10: Do you see that?

11: A. Yes.

12: Q. Do you have an understanding

13: what that's about?

14: A. Again, similar to what was

15: done on the House side. But again maybe  
16: those questions were developed for the  
17: Senate side, because it appears that this  
18: e-mail was sent after the 3/12  
19: appropriations committee.

20: Q. Okay. So these questions

21: are for senators to ask the DEA?

22: A. I would deduce that

23: that's -- yes, that's the process.

24: Q. And that's a common tactic

p. 00220

p. 00222

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00223

01: that you use in the organization, is to  
02: draft questions for senators or members  
03: of Congress to ask DEA if you have  
04: concerns?  
05: MR. WEINSTEIN: Objection to  
06: form.  
07: THE WITNESS: That is a  
08: common practice for a lot of  
09: associations that interact with  
10: regulatory authorities.  
11: BY MR. PIFKO:  
12: Q. Including HDA?  
13: A. In this instance including  
14: HDA.  
15: Q. And so when it says, "Brief  
16: senate appropriation subcommittees in  
17: advance of the hearing," there's also  
18: one-on-one meetings that occur with the  
19: senators in advance of the hearing?  
20: MR. WEINSTEIN: Objection to  
21: form. Foundation.  
22: THE WITNESS: I would  
23: imagine these are primarily  
24: meetings with staff,

00225

01: your views and provide potential  
02: questions?  
03: A. Correct.  
04: MR. WEINSTEIN: Objection to  
05: form.  
06: THE WITNESS: Sorry.  
07: BY MR. PIFKO:  
08: Q. Go a few more tactics down.  
09: Number 6, it says, "Educate and seek  
10: advocates for HDMA among pain community  
11: who will assist in delivering our message  
12: to Hill."  
13: Do you see that?  
14: A. I do.  
15: Q. So you were going to, as  
16: part of this effort, you were going to  
17: also enlist others in the pain community  
18: to communicate your message to lawmakers;  
19: that's correct?  
20: MS. CHARLES: Objection to  
21: form.  
22: THE WITNESS: That's what  
23: this indicates.  
24: BY MR. PIFKO:

p. 00223

p. 00225

00224

01: staff-to-staff meetings. Seldom  
02: to the member representatives  
03: participate in those meetings. So  
04: these are staff briefings.  
05: BY MR. PIFKO:  
06: Q. That's where the questions  
07: are provided?  
08: MR. WEINSTEIN: Objection to  
09: form. Foundation.  
10: THE WITNESS: Again, that's  
11: where I -- if they were provided,  
12: again, I don't know what was  
13: provided. This was looking at a  
14: draft document of some kind. I am  
15: not sure which specific questions  
16: were provided or if any of the  
17: questions were provided.  
18: BY MR. PIFKO:  
19: Q. Okay. But in your ordinary  
20: practice as part of your lobbying  
21: efforts, that's how questions would be  
22: provided, you would have your staff  
23: members meet with lawmakers' staff  
24: members and that's when you would discuss

00226

01: Q. And then it says, "Status,  
02: HDMA joined and briefed the Pain Care  
03: Forum, an informal coalition of  
04: pharmaceutical companies and patient  
05: advocacy groups focusing on pain  
06: management issues and will follow up upon  
07: release of our industry compliance  
08: guidelines."  
09: Did I read that correctly?  
10: A. You did.  
11: Q. Okay. And so that confirms  
12: HDMA did join the Pain Care Forum,  
13: correct?  
14: A. Yes. In 2008.  
15: Q. And you briefed them on  
16: these issues, correct?  
17: MS. MACKAY: Objection to  
18: form.  
19: THE WITNESS: Again, this  
20: seems to indicate that we briefed  
21: them that we were developing the  
22: industry compliance guidelines  
23: just to give them a heads-up. And  
24: we were indicating to this, we

p. 00224

p. 00226

00227

01: would share our final document  
02: when it was developed and  
03: released.

04: BY MR. PIFKO:

05: Q. And then you sought their  
06: contribution to also advocate to members  
07: on the Hill, correct?

08: MR. WEINSTEIN: Objection to  
09: form.

10: THE WITNESS: Again I don't  
11: know what the specific ask was.  
12: This was an informal kind of  
13: coalition group, and we were  
14: briefing them on what we were  
15: doing. This seems to indicate  
16: that we were -- educate and seek  
17: advocates for HDMA among pain  
18: community who will assist in  
19: delivering our message on the  
20: Hill. So yes, it appears that we  
21: were asking them to support our  
22: industry compliance guidelines.

23: BY MR. PIFKO:

24: Q. And then Number 8 says,

00229

01: we were trying to basically convey  
02: in some of the questions that were  
03: put together. So we were -- yeah,  
04: we were seeking greater clarity  
05: from the agency and it was not  
06: forthcoming, and so we were  
07: requesting that our congressional  
08: colleagues possibly request a  
09: meeting so we could convey those  
10: concerns.

11: BY MR. PIFKO:

12: Q. When I handed you this  
13: document, you read it in its entirety,  
14: correct?

15: A. The document that I'm  
16: looking at right now?

17: Q. Yeah. We took a moment and  
18: you were reading it?

19: A. Yeah, I read -- yes, the  
20: pages that you referenced, yes.

21: Q. You read the questions --  
22: potential Hill questions for DEA, right?

23: A. I did, yes.

24: Q. Okay. And so the thrust of

p. 00227

p. 00229

00228

01: "Identify high-level congressional  
02: 'champion' who will request a meeting  
03: with DEA to discuss concerns with current  
04: tactics."

05: Do you see that?

06: A. I do.

07: Q. Do you have an understanding

08: about what that's about?

09: A. Again, what it says. So

10: probably ask a member of Congress,  
11: possibly a high-level senior ranking  
12: official or a ranking member in their  
13: party to request a meeting with DEA,  
14: possibly a committee chairman of some  
15: kind, a relevant committee.

16: Q. And so at this time HDMA and  
17: its members were concerned with the  
18: enforcement tactics being used by the  
19: DEA, correct?

20: MR. WEINSTEIN: Objection to  
21: form.

22: THE WITNESS: I think -- I

23: think there was concern about the

24: lack of clarity and basically what

00230

01: the questions, you know, goes at the end  
02: here. It says, if you look on 157382,  
03: "Isn't your initiative overly broad and  
04: not focused specifically enough on rogue  
05: pharmacies, which in fact make up a  
06: minuscule percentage of any legitimate  
07: wholesaler's business?"

08: And then it says, "Clearly,

09: if a customer is known to be diverting

10: prescription drugs and the wholesale

11: distributor continues to supply that

12: customer, a violation of their registrant

13: responsibilities as has occurred. But my

14: concern here is that your expectations go

15: to a much higher level, asking the

16: wholesaler in essence to be your

17: investigator. I don't think that's

18: appropriate. It seems to me at the end

19: of the day that prescription drug abuse

20: is caused by inappropriate prescribing

21: and inappropriate dispensing, neither of

22: which wholesalers are authorized or

23: capable of regulating or enforcing."

24: Do you see that?

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00231

01: A. I do.  
02: Q. That's a question that you  
03: wanted a senator to ask the acting  
04: administrator of the DEA, correct?  
05: A. It was -- it was developed  
06: here. Again, I don't know if it was ever  
07: requested, a senator or staff or anybody.  
08: Q. But at this stage it's a  
09: potential question for some lawmaker to  
10: ask the DEA, correct?  
11: A. That's -- yes. That's the  
12: context for this.  
13: (Document marked for  
14: identification as Exhibit  
15: HDA-Kelly-23.)  
16: BY MR. PIFKO:  
17: Q. I'm handing you what's  
18: marked Exhibit 23. If you recall,  
19: earlier on in Exhibit 8, there was an  
20: e-mail from Anita Ducca that attached  
21: some of her draft summaries of the  
22: various meetings and events that occurred  
23: in connection with the industry  
24: compliance guidelines and meetings with

00233

01: Frank law firm as well?  
02: A. It does, yes.  
03: Q. And who is Robert Barnett,  
04: is he -- is he from Williams & Connolly  
05: as well?  
06: A. Yes.  
07: Q. Okay. They were outside  
08: counsel to HDA at this time?  
09: A. Yes.  
10: Q. Along with David Durkin?  
11: A. That's correct.  
12: Q. Okay. And so Anita Ducca is  
13: there, and Scott Melville, who was your  
14: predecessor was there?  
15: A. Yes.  
16: Q. So Ms. Ducca has a meeting  
17: summary here. So it appears that Bob  
18: Barnett and Rich Cooper led the  
19: introductory remarks in the meeting,  
20: agree?  
21: A. Yes. They led off.  
22: Q. Okay. So, Bob explained the  
23: purpose of the meeting. He explained --  
24: I'm reading from the document -- "the

p. 00231

p. 00233

00232

01: the DEA. And this is -- Exhibit 23, is  
02: one of those attachments. She said, if  
03: you recall, these were draft summaries of  
04: her meetings.  
05: A. Yes.  
06: Q. Okay. So take a minute to  
07: look at Exhibit 23, and -- which is a  
08: three-page document, and let me know when  
09: you're done. For the record, the Bates  
10: labels are CAH\_MDL2804\_02489188 through  
11: 190.  
12: A. Okay.  
13: Q. So this is a summary of the  
14: first meeting that HDA had with DEA  
15: concerning the industry compliance  
16: guidelines, correct?  
17: A. That's correct.  
18: Q. It identifies that attendees  
19: here from DEA and from HDMA, correct?  
20: A. It does.  
21: Q. And in addition to HDMA  
22: members, it also identifies Richard  
23: Cooper from Williams & Connolly as an  
24: attendee and David Durkin from Olsson

00234

01: serious concerns among HDMA members  
02: regarding DEA's recent actions regarding  
03: suspicious orders. When HDMA first  
04: contacted Williams & Connolly regarding  
05: possibly challenging DEA, Bob and Rich  
06: Cooper recommended an alternative that  
07: was based on his prior experience with  
08: other clients in similar positions."  
09: Do you see that?  
10: A. I do.  
11: Q. Did I read that correctly?  
12: A. You did.  
13: Q. Do you recall that being  
14: part of the discussion, that when HDMA  
15: first came to Williams & Connolly to  
16: potentially challenge DEA, they came up  
17: with an alternative idea?  
18: A. Again, I was not at HDA at  
19: the time. But I understand from reading  
20: this, reviewing this document, that was  
21: the -- that was the initial part of the  
22: discussion.  
23: Q. And so Williams & Connolly  
24: recommended that, instead of challenging

p. 00232

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00235

01: the DEA, that the distributors develop a  
02: set of business practices of their own  
03: or, as this says, "a type of standard as  
04: a better approach to show DEA to the  
05: outside world what is intended" -- "that  
06: they intend to be part of the solution  
07: rather than problem"; is that correct?  
08: A. That's correct. Those were  
09: his words, yes.  
10: Q. And that's what he told DEA  
11: at this meeting?  
12: A. I will take it at face value  
13: that that's what was explained, yes.  
14: Q. Other points that Bob  
15: Barnett made were that "HDMA hoped that  
16: DEA would find the guidelines acceptable  
17: as a voluntary 'consent decree,' and we  
18: hoped to receive some form of imprimatur  
19: from you."  
20: Agree?  
21: A. That's what it says, yes.  
22: Q. It's noted here, Bob also  
23: told DEA, "These guidelines have been  
24: adopted and approved by HDMA's board."

00237

01: one who had this previous experience with  
02: the FDA where they developed standards  
03: that were voluntary and eventually became  
04: standard practice among the medical  
05: research community, and this idea of the  
06: industry compliance guidelines was born  
07: out of that, agree?  
08: MR. WEINSTEIN: Objection to  
09: form.  
10: THE WITNESS: I think that's  
11: what's being implied here, yes.  
12: BY MR. PIFKO:  
13: Q. And that's what was told to  
14: DEA in connection with this meeting,  
15: correct?  
16: MR. WEINSTEIN: Objection to  
17: form.  
18: THE WITNESS: That's --  
19: again, that's what it -- seems to  
20: be stipulated here, yes.  
21: BY MR. PIFKO:  
22: Q. So a key point, according to  
23: Anita's notes is that Rich Cooper from  
24: Williams & Connolly made, was that "an

p. 00235

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00236

01: Agree?  
02: A. Which bullet point are you  
03: on?  
04: Q. Second to last on the first  
05: page.  
06: A. Yes.  
07: Q. But then it was explained  
08: that HDMA and its board were open to  
09: suggestions from the DEA, correct?  
10: A. That's correct.  
11: Q. And then it says, "If DEA  
12: accepted them, you wanted to make some  
13: sort of public statement about it,"  
14: correct?  
15: A. That's -- yes, that's what  
16: it -- that's what it says, yes.  
17: Q. So -- then, we're going to  
18: the second page here. So it says, "After  
19: Bob's introductory discussion, he turned  
20: the meeting over to Richard Cooper from  
21: Williams & Connolly."  
22: Agree?  
23: A. Yes.  
24: Q. Okay. And so Rich is the

00238

01: order and question will be stopped until  
02: there was an assessment and found that  
03: the order was not suspicious."  
04: Agree?  
05: A. Where --  
06: Q. Second paragraph, full  
07: paragraph of Page 2.  
08: A. Okay. Yes. I see that,  
09: yes.  
10: Q. And so then, DEA had a  
11: question about "what exactly are you  
12: stopping when you stop the order?"  
13: A. Okay.  
14: Q. And that's some discussion  
15: about that.  
16: Do you see that?  
17: A. Yes.  
18: Q. And so then, Rich Cooper  
19: told DEA that "the guidelines indicated  
20: that the entire order of the specific  
21: product that triggered the threshold  
22: should be held and not released."  
23: Do you see that?  
24: A. Yes.

p. 00236

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00239

01: Q. And then he also said, "The  
02: guidelines expected that the entire order  
03: for the drug product in question would be  
04: held, even if part of it came under a  
05: threshold."  
06: Do you see that?  
07: MR. WEINSTEIN: Objection to  
08: form.  
09: THE WITNESS: Yes. Last  
10: sentence.  
11: BY MR. PIFKO:  
12: Q. Okay. And so that resolves  
13: this partial shipment issue we discussed  
14: before the break, agree?  
15: MS. ROLLINS: Objection to  
16: form.  
17: THE WITNESS: Again, it  
18: seems to indicate that there  
19: was -- yes, that was going to be  
20: the final recommendation in the --  
21: in the guidelines.  
22: BY MR. PIFKO:  
23: Q. To pull the entire -- entire  
24: order while the drug in question was

00241

01: webinars and seminars to educate the  
02: members and the customers about the  
03: guidelines as well"?  
04: A. Yes.  
05: Q. And Scott also told DEA that  
06: "HDA would discuss, explain and encourage  
07: acceptance of the guidelines by other  
08: trade associations, including  
09: manufacturing and pharmacy groups."  
10: That's the second bullet  
11: point on the page?  
12: A. Yes, yes, yes, yes, yes.  
13: Q. So you agree, a key message  
14: that Scott was communicating to DEA here  
15: was that HDA was going to work to make  
16: sure its members and other participants  
17: in the supply chain in the pharmaceutical  
18: industry would implement these  
19: guidelines, correct?  
20: MR. WEINSTEIN: Objection to  
21: form.  
22: THE WITNESS: I think we --  
23: we meant to basically educate the  
24: rest, that they were available.

p. 00239

p. 00241

00240

01: investigated, correct?  
02: MR. WEINSTEIN: Objection to  
03: form.  
04: THE WITNESS: Again, I think  
05: that's, yes, what this seems to  
06: entail.  
07: BY MR. PIFKO:  
08: Q. So then the meeting was  
09: handed over to Scott Melville, your --  
10: your predecessor, agree?  
11: A. Yes.  
12: Q. And Scott told the DEA that,  
13: if you look in those bullet points, that  
14: "HDMA and its members intended to help  
15: implement the guidelines by making  
16: consultants known to them who could aid  
17: in the implementation."  
18: Do you see that?  
19: A. I do.  
20: Q. And then he said that "they  
21: would discuss it with the Pain Care  
22: Forum"?  
23: A. Yes.  
24: Q. And that "HDMA would hold

00242

01: Again, we are not a  
02: standards agency, we are not a  
03: regulatory authority. We can't  
04: basically make any entity comply  
05: with the guidelines. We were just  
06: going to educate as many folks as  
07: we could about their existence and  
08: make them available.  
09: BY MR. PIFKO:  
10: Q. But you told DEA that you  
11: wanted to help your members implement the  
12: guidelines, correct?  
13: MR. WEINSTEIN: Objection to  
14: form.  
15: THE WITNESS: That's -- yes,  
16: that's what it -- that's what it  
17: says here, yes.  
18: BY MR. PIFKO:  
19: Q. Handing you what's marked as  
20: Exhibit 24.  
21: (Document marked for  
22: identification as Exhibit  
23: HDA-Kelly-24.)  
24: BY MR. PIFKO:

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00243

01: Q. It is a three-page e-mail  
02: between HDA and AmerisourceBergen.  
03: Bates-labeled HDA\_MDL\_000156499 through  
04: 156501.  
05: Take a minute to review  
06: this, and let me know when you're done.  
07: There is some discussion  
08: about whether Chris Zimmerman from  
09: AmerisourceBergen is going to serve as  
10: a -- a chairman of a committee. I'm not  
11: interested in that part of the discussion  
12: here.  
13: A. Okay.  
14: Q. This goes back to earlier in  
15: the process of developing the industry  
16: compliance guidelines or best practices,  
17: agree, it's back in early January 2008?  
18: A. Yes.  
19: Q. And this is before this  
20: meeting with DEA, correct?  
21: A. It is.  
22: Q. Okay. And in this e-mail on  
23: the first page, 156499, Mr. Zimmerman  
24: tells HDA's Anita Ducca, "I think we need

00245

01: already under strict adherence to  
02: a specific plan with -- directly  
03: with the DEA that satisfies their  
04: obligations. But it's specific to  
05: those companies individually,  
06: therefore, a model plan or  
07: guidelines is irrelevant for them.  
08: BY MR. PIFKO:  
09: Q. And they have no plan on  
10: implementing them at this time, correct?  
11: MS. ROLLINS: Objection to  
12: form.  
13: MR. WEINSTEIN: Objection to  
14: foundation and form.  
15: THE WITNESS: Because they  
16: have their own policies in place.  
17: BY MR. PIFKO:  
18: Q. You said here that they have  
19: a plan that satisfies the DEA. Where  
20: does it say that it satisfies the DEA?  
21: A. I'm deducing from this  
22: document that since ABC has an agreement  
23: with DEA, it does not matter what best  
24: practices HDMA develops because ABC must

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00244

01: to discuss the suspicious order project.  
02: Since ABC has an agreement with DEA, it  
03: does not matter what best practices HDMA  
04: develops because ABC must adhere to its  
05: written agreement with DEA. I assume  
06: Cardinal will be in the same boat.  
07: Therefore, I'm not sure what benefit ABC  
08: would receive from this project."  
09: Do you see that?  
10: A. I do.  
11: Q. Did I read that correctly?  
12: A. You do.  
13: Q. Okay. So you agree that at  
14: this time Mr. Zimmerman is saying that  
15: he's not going to implement any  
16: guidelines or best practices, and he  
17: assumes Cardinal is not going to either,  
18: correct?  
19: MS. ROLLINS: Object to  
20: form.  
21: MR. WEINSTEIN: Objection to  
22: form. Foundation.  
23: THE WITNESS: I think what  
24: he's implying is that they are

00246

01: adhere to its written agreement with DEA.  
02: Q. What about Cardinal?  
03: MR. WEINSTEIN: Objection to  
04: form.  
05: MS. CHARLES: Objection to  
06: form.  
07: BY MR. PIFKO:  
08: Q. It doesn't say anything like  
09: that about Cardinal, does it?  
10: MR. WEINSTEIN: Objection to  
11: form. Foundation.  
12: THE WITNESS: An individual  
13: from ABC insinuates that Cardinal  
14: may be a similar position due to  
15: a -- maybe a consent decree that  
16: Cardinal entered into with DEA as  
17: well that would be in the same  
18: constrictive with regard to their  
19: practices that ABC is at the time.  
20: BY MR. PIFKO:  
21: Q. And so the HDA knew this  
22: information before it had the meeting  
23: with DEA, correct?  
24: A. Obviously we were apprised

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00247

01: that they were basically not going to be  
02: of help in developing the guidelines or  
03: adopting the guidelines, because they are  
04: there are under a separate agreement.  
05: Q. Do you know if  
06: AmerisourceBergen ever asked DEA if it  
07: could follow the guidelines as an  
08: improvement on measures it was already  
09: engaged in?  
10: MS. ROLLINS: Objection to  
11: form.  
12: MR. WEINSTEIN: Objection to  
13: form. Foundation.  
14: THE WITNESS: I do not.  
15: BY MR. PIFKO:  
16: Q. No one ever told you that  
17: they had requested anything from DEA as  
18: far as being able to implement the  
19: industry compliance guidelines?  
20: MS. ROLLINS: Objection to  
21: form.  
22: THE WITNESS: That ABC had  
23: requested? Again, I don't know.  
24:

00249

01: applicable to various size  
02: companies and be able to adapt.  
03: So again I don't know if  
04: anybody adopted the entire  
05: document verbatim or not. And we  
06: didn't ask.  
07: BY MR. PIFKO:  
08: Q. You don't know if anybody  
09: adopted parts of the document either,  
10: correct?

11: MR. WEINSTEIN: Objection to  
12: form.

13: THE WITNESS: We don't.

14: BY MR. PIFKO:

15: Q. So sitting here today, you  
16: don't know, and at no time does HDMA know  
17: if any members or other distributors  
18: adopted all or part of the industry  
19: compliance guidelines, correct?  
20: MR. WEINSTEIN: Objection to  
21: form.

22: THE WITNESS: I don't know,  
23: nor did we ask. And again, I  
24: stated before, we are not a

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00248

01: BY MR. PIFKO:  
02: Q. Same question about Cardinal  
03: Health.  
04: MS. CHARLES: Objection to  
05: form.  
06: THE WITNESS: Again I don't  
07: know. I don't know.  
08: BY MR. PIFKO:  
09: Q. To your knowledge, did any  
10: distributor implement the industry  
11: compliance guidelines?  
12: MR. WEINSTEIN: Objection to  
13: form. Foundation.  
14: THE WITNESS: Again, I don't  
15: know. They were -- they were  
16: guidelines. Many of the  
17: companies, from what I understand,  
18: already had various processes in  
19: place. These guidelines were  
20: developed to better inform them  
21: about expectations within the DEA.  
22: And if they -- they could beg and  
23: borrow, and again it was meant to  
24: be kind of something that could be

00250

01: regulatory authority; we are not a  
02: standard-setting body. We are  
03: simply doing our best to inform  
04: our members about existing  
05: policies.

06: BY MR. PIFKO:

07: Q. And to your knowledge, no  
08: pharmaceutical manufacturer ever adopted  
09: the industry compliance guidelines or any  
10: portion of them, correct?

11: MR. WEINSTEIN: Objection to  
12: form.

13: MS. MACKAY: And foundation.

14: THE WITNESS: And again,  
15: they were not -- they were not  
16: developed for manufacturers. They  
17: were developed for our core  
18: members, the distributor members  
19: of HDA.

20: BY MR. PIFKO:

21: Q. But you did discuss them  
22: with the Pain Care Forum, which included  
23: manufacturers, correct?  
24: MR. WEINSTEIN: Objection to

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00251

01: form.  
02: THE WITNESS: Among many  
03: other groups, yes. A lot of  
04: pharmacies groups, everybody in  
05: the supply chain.  
06: BY MR. PIFKO:  
07: Q. Okay. And just to be  
08: clear -- I think you had the answer, but  
09: I don't think we have a clear record.  
10: To your knowledge, no  
11: distributor, manufacturer, or pharmacy  
12: has ever implemented the guidelines or  
13: any portion of the guidelines, correct?  
14: MR. WEINSTEIN: Objection to  
15: form. Foundation.  
16: THE WITNESS: Again, I think  
17: every distributor member has their  
18: own compliance guidelines that are  
19: basically developed and put in  
20: place for their company, their  
21: specific customer base, et cetera.  
22: I don't know that anybody kind of  
23: copied the industry compliance  
24: guidelines and made it part of

00253

01: ICG --  
02: MR. WEINSTEIN: Objection to  
03: form.  
04: BY MR. PIFKO:  
05: Q. -- in February 25th, 2011?  
06: MR. WEINSTEIN: Objection to  
07: form.  
08: THE WITNESS: No. I think  
09: what we asked was, were the ICGs  
10: still relevant. That was -- we  
11: wanted to make sure that our  
12: guidelines were still  
13: relatively -- we weren't asking  
14: whether they were consistent with  
15: our -- with basically our  
16: guidance. Were our guidelines  
17: still relevant and consistent four  
18: years of their publication or  
19: three years after the publication.  
20: BY MR. PIFKO:  
21: Q. Well, no, it says -- it  
22: literally says in the document, "Request  
23: review of consistency between the ICG and  
24: member practices."

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00252

01: their own protocols and  
02: procedures. I don't know. Nor  
03: did we ask.  
04: BY MR. PIFKO:  
05: Q. I want to turn your  
06: attention back to Exhibit 2. Are you  
07: there?  
08: A. Yes. I'm at Exhibit 2.  
09: Q. You want you to go to the  
10: page Bates-labeled HDA\_MDL\_000081366.  
11: It's got dates that start with  
12: September 30, 2010, to March 2011.  
13: Do you see that?  
14: A. Yes.  
15: Q. So on February 25, 2011, it  
16: says, "ExComm concurs with government  
17: policy" -- government public policy  
18: council directive. Requests review of  
19: consistency between the ICG and member  
20: practices."  
21: Do you see that?  
22: A. Yes.  
23: Q. So HDA did review the  
24: consistency of member practices with the

00254

01: A. Is the ICG current.  
02: Q. Right. But there's a -- you  
03: were reviewing whether there was  
04: consistency between the member practices  
05: and the ICG, correct?  
06: MR. WEINSTEIN: Are you  
07: testifying for the witness or is  
08: there a question in there?  
09: MR. PIFKO: I'm asking him a  
10: question.  
11: THE WITNESS: Again -- and,  
12: again, this is just as a statement  
13: in a -- in a chronology here. I  
14: think the -- the request was to  
15: basically look at the ICGs and  
16: determine based on what they are  
17: doing and what's confronting them  
18: in that marketplace, at that time,  
19: three years after the publication,  
20: are they still relevant and are  
21: they still current.  
22: BY MR. PIFKO:  
23: Q. Right. But there's a  
24: comparison of the ICGs and the member

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00255

01: practices at that time, correct?  
02: MR. WEINSTEIN: Objection to  
03: form.  
04: THE WITNESS: That we  
05: requested the individual member  
06: companies to look at our ICGs and  
07: compare them with their practices,  
08: and let us know if they were still  
09: relevant.  
10: We did not review individual  
11: company member practices. And nor  
12: could we with our antitrust.  
13: BY MR. PIFKO:  
14: Q. Well, you did. You  
15: requested the -- the member companies'  
16: practices when you developed the industry  
17: compliance guidelines. You've already  
18: testified to that, it's all over the  
19: documents.  
20: A. We -- we submitted -- we  
21: submitted a questionnaire. We asked them  
22: to respond to the questionnaire based on  
23: what their practices were. And again we  
24: didn't -- we didn't ask for their

00257

01: comfortable responding to the  
02: questionnaire, did.  
03: We did not ask for their  
04: policies. We asked them to  
05: respond to the questionnaire. To  
06: some extent, it --  
07: BY MR. PIFKO:  
08: Q. That's -- that's not --  
09: that's not what the document says. And  
10: that's not what you testified to earlier.  
11: MR. WEINSTEIN: Objection to  
12: form. Wait for a question.  
13: BY MR. PIFKO:  
14: Q. Remember, that we are under  
15: oath here?  
16: A. I do.  
17: MR. WEINSTEIN: Sir, come  
18: on, Mark, give me a break.  
19: MR. PIFKO: He's trying to  
20: change his testimony.  
21: MR. WEINSTEIN: Give me a  
22: break, Mark. Ask your questions.  
23: BY MR. PIFKO:  
24: Q. Exhibit 10 talks about the

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00256

01: practices verbatim.  
02: Q. You did --  
03: A. To the extent that they were  
04: comfortable --  
05: Q. Ms. Ducca expressly said she  
06: would facilitate that with the  
07: consultant. Are you now --  
08: MR. WEINSTEIN: Objection to  
09: form.  
10: BY MR. PIFKO:  
11: Q. -- disputing what you said  
12: on the record before?  
13: MR. WEINSTEIN: Objection to  
14: form.  
15: THE WITNESS: No. That --  
16: MR. WEINSTEIN:  
17: Mischaracterizes testimony.  
18: THE WITNESS: I'm not --  
19: I'm -- I'm not disputing that at  
20: all.  
21: The consultant was brought  
22: in, developed a questionnaire.  
23: The questionnaire was submitted to  
24: the membership. Those that felt

00258

01: processes that the consultant's going to  
02: use, and it says, "Obtaining where  
03: available copies of HDMA member  
04: companies' internal suspicious order  
05: business practices." And Anita Ducca  
06: said she was going to handle that.  
07: And then in Exhibit 12, she  
08: says, "We've been contacting our members  
09: to request their suspicious order  
10: information. This is the first of a few  
11: e-mails I'll be sending you." She sends  
12: the policies from Henry Schein. It's  
13: separate than the -- the interview  
14: questionnaire that was discussed.  
15: MR. WEINSTEIN: Just wait  
16: for the question.  
17: BY MR. PIFKO:  
18: Q. So are you disputing that  
19: HDA requested copies of its members'  
20: suspicious order practices?  
21: MR. WEINSTEIN: Objection to  
22: form.  
23: THE WITNESS: I'm not -- I'm  
24: not disputing what was -- what was

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00259

01: typed. I'm not aware that we were  
02: receiving verbatim copies of their  
03: suspicious order monitoring  
04: protocols.  
05: BY MR. PIFKO:  
06: Q. That was expressly part of  
07: the protocol.  
08: MR. WEINSTEIN: Objection to  
09: form.  
10: BY MR. PIFKO:  
11: Q. Are you disputing that?  
12: MR. WEINSTEIN: Objection to  
13: form.  
14: THE WITNESS: Again, are you  
15: referencing a specific --  
16: BY MR. PIFKO:  
17: Q. Yeah. Exhibit 10 --  
18: A. Exhibit 10.  
19: Q. It says she is going to  
20: review the members' suspicious order  
21: policies.  
22: A. This is in the -- where are  
23: you referring to?  
24: Q. Page 2.

00261

01: stuff from Henry Schein and says she is  
02: sending others. So --  
03: MR. WEINSTEIN: Objection to  
04: form.  
05: BY MR. PIFKO:  
06: Q. -- are you disputing that  
07: HDA collected suspicious order practices  
08: from its members?  
09: MR. WEINSTEIN: Objection to  
10: form.  
11: THE WITNESS: I'm not  
12: disputing that.  
13: BY MR. PIFKO:  
14: Q. Okay. That's all I'm  
15: asking.  
16: A. Again, I don't know what  
17: attachments were submitted by Henry  
18: Schein.  
19: Q. I'm handing you what's  
20: marked as Exhibit 25.  
21: (Document marked for  
22: identification as Exhibit  
23: HDA-Kelly-25.)  
24: BY MR. PIFKO:

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00260

01: MR. WEINSTEIN: Of  
02: Exhibit 10.  
03: MR. PIFKO: 3(B).  
04: THE WITNESS: Where  
05: available copies of HDMA member  
06: copies --  
07: BY MR. PIFKO:  
08: Q. "Obtaining where available  
09: copies of HDMA member companies' internal  
10: suspicious business order practices."  
11: Then if you look at Page 3  
12: she says, "Contacting HDMA members to, A,  
13: request copies of their current  
14: suspicious orders business practices.  
15: HDMA can facilitate this by sending an  
16: e-mail to our members making the  
17: request."  
18: That's different from the  
19: interviews. C is the interviews.  
20: MR. WEINSTEIN: Objection to  
21: form.  
22: THE WITNESS: Again --  
23: BY MR. PIFKO:  
24: Q. In Exhibit 12 she sends Bill

00262

01: Q. Exhibit 25 is a document  
02: Bates-labeled HDA\_MDL\_000213079 through  
03: 213088. It's a document, PowerPoint  
04: presentation entitled, "DEA Suspicious  
05: Orders: Recommended Industry Compliance  
06: Guidelines. Regional round table. May  
07: 7, 2008."  
08: Take a minute to review  
09: this, and let me know when you're done.  
10: A. Okay.  
11: Q. Do you know who this  
12: presentation was made to?  
13: A. From what I understand, this  
14: was before I joined the organization.  
15: There were a series of briefings that we  
16: would provide to members that weren't  
17: able to travel that much. Smaller  
18: companies that were in different parts of  
19: the country.  
20: So we would have regional  
21: round tables where the smaller companies  
22: would be able to get to a central  
23: location and we'd come in and update them  
24: on key issues.

p. 00260

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00263

01: Q. Okay. So this is an example  
02: of updating some of these smaller  
03: companies about the industry compliance  
04: guidelines and the process that was  
05: engaged to develop them and roll them  
06: out?

07: A. That seems to be, yes, what

08: it was.

09: Q. It's got some summary of DEA  
10: reaction on Page 213085 which is  
11: consistent with the notes that Ms. Ducca  
12: took of the first meeting. Agree?

13: MS. CHARLES: Object to  
14: form.

15: THE WITNESS: Yes.

16: (Document marked for  
17: identification as Exhibit  
18: HDA-Kelly-26.)

19: BY MR. PIFKO:

20: Q. I'm handing you what's  
21: marked as Exhibit 26. These are  
22: Ms. Ducca's notes from the second meeting  
23: with DEA on suspicious orders which was  
24: attached to Exhibit 8, I believe.

00265

01: form.

02: THE WITNESS: Yes.

03: BY MR. PIFKO:

04: Q. And it's got the attendees  
05: here from DEA, it includes Linden Barber,  
06: Cathy Gallagher, Robert Gleason, agree?

07: A. Yes.

08: Q. And then from HDMA, we've  
09: got Ms. Ducca, Scott Melville. And  
10: you've got outside counsel, Robert  
11: Burnett, Richard Cooper, and David  
12: Durkin, agree?

13: A. Yes.

14: Q. Okay. So they just go  
15: through the draft guidelines that were  
16: provided to them, which are the ones that  
17: were in Exhibit 21.

18: So then, it goes through  
19: page by page providing thoughts and  
20: comments DEA has, agree?

21: A. Yes, that's what these notes

22: do.

23: Q. That's what's reflected in

24: Exhibit 26, correct?

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00264

01: For the record, it's  
02: Bates-labeled CAH\_MDL2804\_02489191  
03: through 196. Take a minute to review  
04: this, and let me know when you're done.

05: A. Okay.

06: Q. Are you done? You reviewed  
07: this?

08: A. I reviewed it, yes.

09: Q. So these are Ms. Ducca's  
10: notes of the second meeting with DEA,  
11: correct?

12: A. Yes.

13: Q. And if you recall, from the  
14: notes from the first meeting, one of the  
15: comments was that they welcomed DEA's  
16: input on the draft that had been shared  
17: at the prior meeting, agree?

18: A. Yes.

19: Q. And so then, this is DEA  
20: providing its comments on the industry  
21: compliance guidelines that had been  
22: provided to them at the prior meeting,  
23: agree?

24: MR. WEINSTEIN: Objection to

00266

01: A. Yes.

02: Q. Okay. So one comment DEA  
03: has is that, "It's recommended that you  
04: add into the outline that once an order  
05: is determined to be suspicious, it  
06: shouldn't be shipped. DEA understood  
07: that it was in the body of the  
08: guidelines, but they wanted to see it  
09: upfront in the outline as well." Agreed?

10: MR. WEINSTEIN: Objection to  
11: form.

12: THE WITNESS: I'm sorry,

13: where -- where --

14: BY MR. PIFKO:

15: Q. Page 3.

16: A. Page 3, I'm sorry.

17: Q. No I'm on the first page of  
18: Exhibit 26. But I'm looking at the  
19: comment from Page 3.

20: A. Oh, I'm sorry. Okay, yes.

21: Q. DEA is just emphasizing that  
22: the -- if an order is suspicious, it  
23: shouldn't be shipped. They want that up  
24: in the front in the outline, even though

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00267

01: it's in the body of the document, agree?  
02: A. That's what this notes says,  
03: yes.  
04: Q. The comment for Page 4, Item  
05: 1B is saying that for a questionnaire  
06: that might be to a distributor's  
07: customer, DEA wants the industry to be  
08: aware that even if you obtain a signed  
09: document, that's not going to be a  
10: defense; distributors have to do more to  
11: identify the legitimacy, agree?  
12: MR. WEINSTEIN: Objection to  
13: form.

14: THE WITNESS: Yes, that's

15: what it says.

16: BY MR. PIFKO:

17: Q. Turning to the second page.  
18: It says, a comment halfway down the page  
19: on Page -- the comment for Page 6.  
20: There's actually two. I'm looking at  
21: the -- oh, there's actually three. I'm  
22: looking at the second one. It says,  
23: "Several times they" -- which is DEA,  
24: "they said that the procedures" --

00269

01: Q. "They also want the initial  
02: screen of orders to focus on A, patterns  
03: of ordering, comparing the present order  
04: to, one, past orders from the same  
05: customer including whether the frequency  
06: of orders is suspicious; two, orders from  
07: similar customers; and, three, orders  
08: from other establishments of the same  
09: type in the locale or region." Agree?  
10: A. That's what it says.  
11: Q. Okay. And then they also  
12: want the initial screens of orders to  
13: focus on combination of controlled  
14: substances ordered, agree?  
15: A. That's what it says, yes.  
16: Q. Then going to the third  
17: page, at the top, another comment that  
18: DEA made here, it says, was that the term  
19: "order of interest" did not have legal  
20: standing.  
21: Do you see that?  
22: A. I do.  
23: Q. Okay. And that was  
24: something that DEA conveyed at this

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00268

01: "procedures used by members should be  
02: robust and adaptable," agree?  
03: MR. WEINSTEIN: Objection to  
04: form.  
05: THE WITNESS: That's what it  
06: says.  
07: BY MR. PIFKO:  
08: Q. Okay. And then the longer  
09: comment here for Section 2, monitoring on  
10: suspicious orders, the second paragraph  
11: here, it says, "DEA seemed to think that  
12: thresholds focus primarily on volumes and  
13: they expressed the view that an exclusive  
14: or even principal focus on volumes is  
15: inadequate."  
16: Do you see that?  
17: A. I do.  
18: Q. Do you agree that that's  
19: what DEA told HDMA during this meeting?  
20: A. I have no reason to doubt  
21: what's written here.  
22: Q. Okay. And that's what's  
23: written here, correct?  
24: A. That's what's written here.

00270

01: meeting, correct?  
02: A. Again, I'll take it from  
03: this, yes, that they did that.  
04: Q. And then it says, "DEA  
05: emphasized that orders should not remain  
06: in the orders of interest category for  
07: lengthy periods."  
08: Do you see that?  
09: A. Yes.  
10: Q. "They should be investigated  
11: expeditiously and promptly resolved as  
12: either suspicious or not suspicious."  
13: Agree?  
14: MR. WEINSTEIN: Objection to  
15: form.  
16: THE WITNESS: That's what it  
17: says, yes.  
18: BY MR. PIFKO:  
19: Q. Okay. Then there's some  
20: comments about the language about  
21: thresholds that was in the draft industry  
22: compliance guidelines.  
23: Do you see that section?  
24: A. I do.

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00271

01: Q. Okay. So the first is that,  
02: "DEA thought it might be interpreted to  
03: mean excessive volumes only. And then  
04: HDMA responded that their intent was to  
05: be broader and to include frequency as a  
06: factor."  
07: Do you see that?  
08: A. I do.  
09: Q. Okay. "DEA asked HDA to  
10: expand the explanation of thresholds,"  
11: agreed?  
12: A. That's what it says, yes.  
13: Q. And then, "DEA asked that  
14: the industry compliance guidelines say  
15: the drug or drugs that cause an order to  
16: be an order of interest should not be  
17: shipped where the order is an order of  
18: interest."  
19: Do you see that?  
20: A. I do.  
21: Q. Okay. You agree that that  
22: was something that the DEA conveyed at  
23: this meeting?  
24: A. Again, I have no reason to

00273

01: Q. Going to Page 4. There is  
02: some discussion about how to evaluate  
03: orders that aren't just of high volume.  
04: It says, "They gave the example of an  
05: internet pharmacy that might be ordering  
06: from multiple distributors and that might  
07: not order enough to go over a threshold  
08: over a period of time, but could be  
09: identified by a pattern of how and when  
10: they ordered.  
11: "For example, they thought  
12: if a pharmacy ordered only every three to  
13: four months, but then when they did so,  
14: ordered a large volume, that might be a  
15: signal the pharmacy was doing business  
16: with several distributors and rotating  
17: which one they ordered from?"  
18: Do you see that?  
19: A. I do.  
20: Q. That was something that was  
21: communicated?  
22: A. It's written here. I have  
23: no reason to doubt that that was what was  
24: stated.

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00272

01: doubt what was stated here on this paper.  
02: Q. And then finally, it says,  
03: "DEA suggested that we delete the second  
04: paragraph under C, develop thresholds to  
05: identify orders of interest."  
06: Do you see that?  
07: A. I do.  
08: Q. It says, "DEA has backed  
09: away from the standard of three times the  
10: monthly average order for Schedule II and  
11: ARCOS-reportable Schedule III products.  
12: DEA suggested that we substitute a  
13: paragraph based on more recent DEA  
14: guidance."  
15: Do you see that?  
16: A. I do.  
17: Q. So you understood that DEA  
18: was communicating here not to use the  
19: three times multiplier, correct?  
20: MR. WEINSTEIN: Objection to  
21: form. Foundation.  
22: THE WITNESS: That seems to  
23: be what this indicates, yes.  
24: BY MR. PIFKO:

00274

01: Q. Okay. And then we go to the  
02: section on Page 8 in the guidelines,  
03: "Stop shipments of an order of interest."  
04: Do you see that?  
05: A. I do.  
06: Q. And then it says, "DEA asked  
07: us to reemphasize that an order should  
08: not be shipped" -- and it's underlined --  
09: "if there was reason to believe there was  
10: a problem."  
11: Do you see that?  
12: A. I do.  
13: Q. So DEA made that point  
14: again, correct?  
15: A. Yes.  
16: MR. WEINSTEIN: Objection to  
17: form.  
18: BY MR. PIFKO:  
19: Q. And then it says, "In fact,  
20: they asked us to add in that if one  
21: controlled substance in the order could  
22: be a problem, then other controlled  
23: substances in the order may also be a  
24: problem and the distributor should

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00275

01: consider holding the others."  
02: Do you see that?  
03: A. I do.  
04: Q. Did I read that correctly?  
05: A. You did.  
06: Q. It's your understanding that  
07: DEA communicated this to HDA in providing  
08: comments on the guidelines, correct?  
09: A. I have no reason to doubt  
10: what's written here.  
11: Q. They gave an example of an  
12: order where the volume of hydrocodone  
13: triggered a threshold, but that both  
14: hydrocodone and alprazolam were included  
15: in the same order.  
16: Do you see that?  
17: A. I do.  
18: Q. And then it says, at the  
19: bottom of that paragraph, "If one part  
20: was suspicious, wouldn't all of it be  
21: suspicious?"  
22: Do you see that?  
23: A. I do.  
24: Q. Do you agree that that was

00277

01: read the full paragraph.  
02: BY MR. PIFKO:  
03: Q. Do you see where I was  
04: reading?  
05: A. I did -- I did see where you  
06: were reading, yes.  
07: Q. Okay. You understood that  
08: DEA communicated that during this  
09: meeting?  
10: A. Again, I have no reason to  
11: doubt what's written here.  
12: Q. I want to go to the last  
13: page of this document. The comment from  
14: Page 11, "DEA asked us to emphasize that  
15: suspicious order must be reported to DEA  
16: whether the wholesaler ships or not, and  
17: to emphasize that timeliness of notice is  
18: very important."  
19: Do you see that?  
20: A. I do.  
21: Q. Do you agree that that was  
22: something communicated during this  
23: meeting?  
24: A. I do.

p. 00275

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00276

01: something communicated at this meeting?  
02: MS. CHARLES: Object to  
03: form.  
04: MR. WEINSTEIN: Objection to  
05: form.  
06: THE WITNESS: Again, that's  
07: written clearly here that that's  
08: what they said.  
09: BY MR. PIFKO:  
10: Q. Then at the last page --  
11: part in that section it says, "DEA's  
12: point was that in some circumstances, the  
13: connection between that drug and another  
14: drug in the order should lead the  
15: wholesaler not to ship the other drug as  
16: well. Again, in their view, looking at  
17: volume ordered drug by drug is not  
18: enough, and basing thresholds solely on  
19: volume is not enough. Even if an order  
20: for a drug that does not meet a volume  
21: threshold may be suspicious in light of  
22: other aspects of the order."  
23: Do you see that?  
24: MR. WEINSTEIN: You didn't

00278

01: Q. Then there's some -- a  
02: section, "Additional Recommendations."  
03: "DEA asked us to further" --  
04: "to either expand this bullet or create a  
05: new bullet to highlight the distributor's  
06: own experience may indicate a need to  
07: revise their system for suspicious order  
08: monitoring."  
09: Do you see that?  
10: A. I do.  
11: Q. So you understood that DEA  
12: was saying, based on a distributor's own  
13: experience, they might need to make  
14: changes or improvements to their system  
15: over time?  
16: MR. WEINSTEIN: Objection to  
17: form.  
18: BY MR. PIFKO:  
19: Q. Correct?  
20: MR. WEINSTEIN: Same  
21: objection.  
22: THE WITNESS: That seems to  
23: indicate what -- yes, what was  
24: said.

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00279

01: BY MR. PIFKO:  
02: Q. And then there's additional  
03: comments that DEA raised that are  
04: provided in bullet points here at the  
05: end. Agree?  
06: A. I see them.  
07: Q. Five of them?  
08: A. Yes.  
09: Q. One is yet another comment  
10: that if an order is -- there's concerns  
11: or questions, it shouldn't be shipped,  
12: agree?  
13: MR. WEINSTEIN: Objection to  
14: form.  
15: THE WITNESS: The first  
16: bullet point?  
17: BY MR. PIFKO:  
18: Q. Yeah. That's what it says?  
19: A. That's what it says.  
20: Q. They want reports on all  
21: orders, even if it's not shipped?  
22: A. On all suspicious orders.  
23: Yes. Bullet Point 2.  
24: Q. Again, a comment about

00281

01: procedures, these would -- these would  
02: have been shared with other members as  
03: well, correct?  
04: MR. WEINSTEIN: Objection to  
05: form.  
06: MS. WICHT: Objection to  
07: form.  
08: THE WITNESS: Again, I can't  
09: say for certain. This is labeled  
10: as a draft. I'm not sure if it  
11: was sent to the RAC or another  
12: group, until -- again, all I have  
13: is the form in front of me so...  
14: I would -- I would imagine  
15: so, that usually we sent -- we're  
16: usually in the habit of  
17: summarizing those meetings and  
18: sending them out to the regulatory  
19: affairs committee.  
20: BY MR. PIFKO:  
21: Q. And as we looked at in one  
22: of the other documents, the outcome of  
23: these meetings was critical to forming  
24: HDA's future strategies, correct?

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00280

01: timeliness in Bullet 3, agree?  
02: A. Yes.  
03: Q. And then 4, it says, "DEA  
04: wants reports of suspicious orders even  
05: if there is some question about the  
06: dispenser status as a customer. For  
07: example, if during a background check of  
08: a potential customer, the customer  
09: indicates that they might be placing  
10: orders that could be suspicious, DEA  
11: wants to know, even if the pharmacy in  
12: question does not become a customer."  
13: Agree, that's what it says?  
14: A. That's what it says, yes.  
15: Q. So you understood that DEA  
16: communicated that as well during this  
17: meeting?  
18: A. Again, I have no reason to  
19: doubt what's written here.  
20: Q. Okay. We know these  
21: comments were shared with Cardinal,  
22: because we have the e-mail.  
23: To your knowledge, in the  
24: ordinary course of HDA's processes and

00282

01: MR. WEINSTEIN: Objection to  
02: form.  
03: THE WITNESS: It was -- I  
04: mean feedback from the DEA was an  
05: important component to finalizing  
06: and -- and fine-tuning the ICGs,  
07: yes.  
08: BY MR. PIFKO:  
09: Q. And developing other  
10: strategies. Remember we looked at that  
11: discussion of strategy for the Hill. It  
12: said that the meetings under industry  
13: compliance guidelines were going to be  
14: key to formulating additional strategies,  
15: agreed?  
16: A. Yes.  
17: Q. Okay. So HDA certainly  
18: would have shared the views of DEA to its  
19: members after this meeting, agree?  
20: MR. WEINSTEIN: Objection to  
21: form.  
22: THE WITNESS: Again, I don't  
23: doubt that they did. I just --  
24: I'm looking at a draft document.

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00283

01: So again, I don't doubt that  
02: this was finalized and the edits  
03: made here were incorporated and a  
04: final document was submitted to  
05: the regulatory affairs committee.  
06: BY MR. PIFKO:  
07: Q. And you agree that the  
08: members of the regulatory affairs  
09: committee would have been interested to  
10: know how this DEA meeting turned out,  
11: correct?  
12: MR. WEINSTEIN: Objection to  
13: form.  
14: MS. CHARLES: Objection.  
15: Form.  
16: MS. MACKAY: Objection.  
17: MS. ROLLINS: Foundation.  
18: MS. WICHT: Objection to  
19: form.  
20: MR. WEINSTEIN: Foundation.  
21: THE WITNESS: I think -- I  
22: think they would be interested,  
23: yes.  
24: BY MR. PIFKO:

00285

01: 2008, Bates-labeled CAH\_MDL2804\_02489203.  
02: Take a minute to review this. This is a  
03: letter HDA received after finalizing the  
04: guidelines from DEA, correct?  
05: A. I'm sorry. Could you  
06: restate it?  
07: Q. Take a minute to review it.  
08: And let me know when you're done.  
09: A. All right.  
10: Q. Okay. This is a letter that  
11: DEA receive -- or sorry, DEA sent to HDA  
12: after the guidelines were completed,  
13: correct?  
14: A. That's my understanding,  
15: yes.  
16: Q. This is to HDA's president,  
17: John Gray?  
18: A. Yes.  
19: Q. Okay. It says in the first  
20: paragraph, second sentence, "The elements  
21: set forth in the industry compliance  
22: guidelines reporting suspicious orders  
23: and preventing diversion of controlled  
24: substances are important to sustaining

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00284

01: Q. I'm handing you what's  
02: marked as Exhibit 27.  
03: (Document marked for  
04: identification as Exhibit  
05: HDA-Kelly-27.)  
06: BY MR. PIFKO:  
07: Q. You don't need to read this  
08: thing in its entirety. But this is the  
09: final guidelines, correct? You can take  
10: a minute to review it. That's all I want  
11: to ask you.  
12: For the record, Exhibit 27  
13: is a document Bates-labeled  
14: HDA\_MDL\_00218651 through 218665.  
15: A. Yes, I would agree that this  
16: is the final version of the industry  
17: compliance guidelines.  
18: (Document marked for  
19: identification as Exhibit  
20: HDA-Kelly-28.)  
21: BY MR. PIFKO:  
22: Q. I'm handing you what's  
23: marked Exhibit 28, single-page document,  
24: a letter from the DEA dated October 17,

00286

01: effective controls to guard against  
02: diversion of controlled substances."  
03: You agree that's what it  
04: says?  
05: A. That's what it says, yes.  
06: Q. Second paragraph, last  
07: sentence, "All distributors must  
08: implement processes and procedures to  
09: effectively ensure that controlled  
10: substances are not diverted to illicit  
11: use."  
12: Do you agree with me that's  
13: what it says?  
14: A. Yes.  
15: Q. Third paragraph, first  
16: sentence, "Although diversion control is  
17: not a one-size-fits-all effort, companies  
18: that implement processes and procedures  
19: that effectively accomplish these  
20: objectives will do much to ensure that  
21: vital controlled substances are not  
22: diverted to illegitimate uses."  
23: Agree that's what it says?  
24: A. Yes.

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00287

01: Q. When HDA received this, did  
02: it send this letter to its members?

03: MS. MACKAY: Objection to  
04: form.

05: THE WITNESS: I imagine it  
06: did. This is the type of  
07: correspondence that we would make  
08: available to the members.

09: MR. PIFKO: We'll take a  
10: break after this document.  
11: (Document marked for  
12: identification as Exhibit  
13: HDA-Kelly-29.)

14: BY MR. PIFKO:

15: Q. Handing you what's been  
16: marked as Exhibit 29. For the record,  
17: Exhibit 29 is a webinar slide  
18: presentation dated Friday, November 14th,  
19: 2008. The title "Industry Compliance  
20: Guidelines. Reporting Suspicious Orders  
21: and Preventing Diversion of Controlled  
22: Substances." It's Bates-labeled  
23: HDA\_MDL\_000145918 through 145968.  
24: Take a minute to review it.

00289

01: its members?  
02: MR. CRAWFORD: Objection to  
03: form.

04: THE WITNESS: Its -- yeah,  
05: its core members. Its distributor  
06: members --

07: BY MR. PIFKO:

08: Q. Okay.

09: A. -- on technical issues.

10: Q. So it's HDA's practice to  
11: provide webinars to core distributor

12: members, correct?

13: A. Yes.

14: Q. And this is a webinar dated

15: Friday, February (sic) 14, 2008, agree?

16: A. Yes.

17: Q. About a month after you got

18: the letter from DEA, Exhibit 28, agree?

19: A. Yes.

20: Q. It's got two presentations,

21: one from Ms. Ducca, and one from David

22: Durkin, agree?

23: A. Yes.

24: Q. So it's got some background

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p. 00289

00288

01: I only have a couple of questions about a  
02: couple of the slides.

03: A. Okay.

04: Q. So you recall in the first  
05: meeting with DEA about the industry  
06: compliance guidelines on April 15, 2008,  
07: one of the thing HDA told DEA that it was  
08: going to engage in an educational  
09: outreach concerning the guidelines,  
10: correct?

11: A. Correct.

12: Q. Okay. Do you understand  
13: that to be a part of the educational  
14: outreach?

15: A. I do, yes.

16: Q. Do you know who this was  
17: given to?

18: A. I do not know. I have no  
19: idea who the participants were.

20: Q. This is a webinar. Is it  
21: common practice for HDA to provide  
22: webinars?

23: A. Yes.

24: Q. And it provides webinars to

00290

01: about how the guidelines were developed  
02: and why they were developed. If you look  
03: at Slide 8, there's a section,

04: history/background.

05: A. Yes.

06: Q. Okay. One of the points of  
07: history and background that's provided on  
08: Slide 8 is that intensity stepped up, and  
09: the DEA sent those three Rannazzisi "Dear

10: Registrant" letters and suspended

11: distributors' registration, agree?

12: A. Yes.

13: Q. And that was part of what  
14: led to the development of these industry

15: compliance guidelines, correct?

16: A. Yes.

17: Q. Then there is -- then next

18: slide, Slide 9 is, what is driving the

19: DEA. So why -- why is that happening,

20: agree? Why are we getting these "Dear

21: Registrant" letters and suspension of

22: registrations?

23: MR. WEINSTEIN: Objection to

24: form.

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00291

01: THE WITNESS: These are,  
02: yeah, several criteria that were  
03: listed, yes.

04: BY MR. PIFKO:

05: Q. Okay. It says prescription  
06: drug abuse. And it talks about increase  
07: in prescribing for pain, nonmedical  
08: prescription drug use is up 80 percent  
09: from 2000. Am I reading that correct?

10: A. That's what -- yes.

11: Q. And there is some discussion  
12: about the "Dear Registrant" Rannazzisi  
13: letters. Some of this we've seen in the  
14: other presentations, agree? Such as the  
15: October 31, 2008, one? Or I'm sorry,  
16: January 31, 2008, one?

17: MR. WEINSTEIN: Objection to  
18: form.

19: THE WITNESS: Yes.

20: BY MR. PIFKO:

21: Q. Then you go to Slide 15. It  
22: tells you the purpose of the industry  
23: compliance guidelines and the DEA  
24: communications, agree?

00293

01: A. Yes there are certain bullet  
02: points, yes.  
03: Q. If you go to Page 29, it's  
04: got a timeline and set of events of  
05: background about the industry compliance  
06: guidelines development.  
07: Do you see that?

08: A. I'm sorry.

09: Q. 29?

10: A. Yes.

11: Q. Are you there?

12: A. I'm on Slide 29, yes.

13: Q. So it says, "The regulatory  
14: affairs committee" -- that's the  
15: committee that developed them, correct?

16: A. Yes.

17: Q. And then they were reviewed

18: by counsel, yes?

19: A. That's correct.

20: Q. And then outreach to related

21: interest groups. That includes the Pain  
22: Care Forum, correct?

23: A. And pharmacy groups, yes,

24: among others, yes.

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p. 00293

00292

01: MR. WEINSTEIN: Objection to  
02: form.

03: THE WITNESS: Yes.

04: BY MR. PIFKO:

05: Q. So, the purpose -- one of  
06: the purposes is to head off further  
07: enforcement of regulatory action, agree?

08: A. That's what it states.

09: Q. One of them is to  
10: demonstrate our members' commitment.

11: Do you see that?

12: A. Yes.

13: Q. Another one says to see

14: distributors as part of the solution.

15: Do you see that?

16: A. Yes.

17: Q. If you go to Slide 24. Some  
18: additional advice on what's a suspicious

19: order from DEA, agreed?

20: A. It says, "Anecdotal advice

21: from DEA," yes.

22: Q. And it's got seven bullet

23: points about criteria that can make an

24: order suspicious, agree?

00294

01: Q. Then the executive committee  
02: approved them, correct?

03: A. That's correct.

04: Q. And then there's these DEA

05: meetings that we just discussed, right?

06: A. Correct.

07: Q. April 15th, June 4th, and

08: Ms. Ducca said she didn't make minutes of

09: the September 5th one, agreed?

10: A. Yes.

11: Q. And then you get the letter

12: on October 23rd that we looked at

13: Exhibit 28?

14: A. Yes.

15: MR. PIFKO: We can take a

16: break.

17: THE VIDEOGRAPHER: The time

18: is 2:12 p.m. We are going off the

19: record.

20: (Short break.)

21: THE VIDEOGRAPHER: The time

22: is 2:29 p.m. We are back on the

23: record.

24: (Document marked for

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p. 00294

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00295

01: identification as Exhibit  
02: HDA-Kelly-30.)  
03: BY MR. PIFKO:  
04: Q. I'm handing you what's  
05: marked Exhibit 30. It's an e-mail,  
06: two-page e-mail with an attachment,  
07: one-page attachment, Bates-labeled  
08: HDA\_MDL\_000080421 through 423.  
09: Take a minute to review it  
10: and let me know when you're done.  
11: Are you ready?  
12: A. Yes.  
13: Q. Are you familiar with this  
14: discussion; you were at HDA at this time,  
15: correct?  
16: A. I was at HDA at this time,  
17: yes. I am not familiar with this  
18: particular e-mail, but I understand the  
19: correspondence between the communications  
20: department and -- and Anita Ducca.  
21: Q. Okay. So Farah Qureshi, am  
22: I -- am I saying that right?  
23: A. Yes.  
24: Q. She's a communications

00297

01: diversion that is attached as the last  
02: page of Exhibit 30. Agree?  
03: MR. WEINSTEIN: Objection to  
04: form.  
05: THE WITNESS: Yes.  
06: BY MR. PIFKO:  
07: Q. And then Anita Ducca  
08: provides some comments in this e-mail  
09: dated Wednesday June 12, 2013. Agree?  
10: A. Yes.  
11: Q. And then she actually  
12: attaches the redline that's -- and the  
13: redline is what is the second page,  
14: agree?  
15: A. Yes, it appears so.  
16: Q. Okay. So one of Anita's  
17: comments is, she says, "Although there  
18: are some examples of what our members do,  
19: I'm hesitant to include anything like  
20: that."  
21: You see that in the third  
22: paragraph?  
23: A. Yes.  
24: Q. And then she says, "Not all

p. 00295

p. 00297

00296

01: manager?  
02: A. Yes.  
03: Q. So she is responsible for  
04: providing initial drafts of public --  
05: public statements that HDA might post?  
06: A. It's --  
07: MR. WEINSTEIN: Objection to  
08: form.  
09: THE WITNESS: Primarily just  
10: with what goes up onto the  
11: internet and what gets -- public  
12: facing. And all the policy  
13: documents are developed usually  
14: inside the government affairs  
15: department.  
16: BY MR. PIFKO:  
17: Q. Okay. So Farrah's job is to  
18: draft materials that will be on HDA's  
19: website?  
20: A. Yes. And kind of, you know,  
21: position them and pretty them up for the  
22: website.  
23: Q. Okay. So she prepares this  
24: one-pager on prescription drug abuse and

00298

01: our members are doing what HD Smith  
02: does."  
03: Do you see that?  
04: A. Yes.  
05: Q. "If DEA sees this, which  
06: they are likely to at some point, they  
07: may question why all our members aren't  
08: doing it."  
09: Do you see that?  
10: A. Yes.  
11: Q. "Sort of like how they took  
12: our ICG and included it in their legal  
13: filing against Walgreens Distribution  
14: Center, claiming that there was an  
15: industry standard that Walgreens should  
16: have known about and been following."  
17: Do you see that?  
18: A. I do.  
19: Q. There were some frustration  
20: at HDA that DEA had cited the industry  
21: compliance guidelines as an industry  
22: standard and used them against Walgreens?  
23: MR. WEINSTEIN: Objection to  
24: form.

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00299

01: THE WITNESS: I don't know  
02: that there was frustration. I  
03: think we were -- we were slightly  
04: concerned that a document that was  
05: voluntary guidelines was cited in  
06: a -- in a proceeding by DEA  
07: against a non-HD member or non --  
08: at that point still HDMA or HDA at  
09: that point. So that was the  
10: concern.

11: BY MR. PIFKO:  
12: Q. I'm handing you what's

13: marked as Exhibit 31.  
14: (Document marked for  
15: identification as Exhibit  
16: HDA-Kelly-31.)

17: BY MR. PIFKO:

18: Q. This is a chronology of  
19: HDMA/HDA executive committee and board of  
20: directors' drug abuse and diversion  
21: discussions at meetings and conference  
22: calls. It's dated January 2, 2018.  
23: It's kind of lengthy. I  
24: just want to point you to a particular

00301

01: Q. Do you have any reason to  
02: dispute that the statements in here are  
03: accurate with respect to discussions at  
04: the board meetings?

05: A. No, I have no reason to  
06: dispute that.

07: Q. Okay. I want to direct you  
08: to Page 7 which is HDA\_MDL\_00015936. Are  
09: you there?

10: A. Yes.

11: Q. Second full paragraph, or  
12: look at -- second paragraph here.

13: A. Yep.

14: Q. Second sentence it says,  
15: "DEA has been referring to the industry  
16: compliance guidelines on suspicious  
17: orders and certain legal documents  
18: resulting in the implication that it is  
19: an industry standard. Since these  
20: guidelines were never intended to  
21: constitute a standard, they have been  
22: taken down from the HDMA website at the  
23: direction of the government public policy  
24: council."

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p. 00301

00300

01: passage that's relevant to the suspicion  
02: about the industry compliance guidelines  
03: on Page 7.  
04: And for the record,  
05: Exhibit 31 is Bates-labeled  
06: HDA\_MDL\_000155930 through 155946.  
07: MR. WEINSTEIN: 47 actually.  
08: MR. PIFKO: 47. Sorry.  
09: Thanks.

10: BY MR. PIFKO:

11: Q. And these notes were  
12: prepared by Ms. Ducca. I want to turn  
13: your attention to Page 7.

14: MR. WEINSTEIN: Was that a

15: question or was that a statement?

16: MR. PIFKO: No, I'm stating  
17: to you.

18: THE WITNESS: I don't know  
19: that these were prepared. This is  
20: a summary of -- of board minutes,  
21: I believe. So it was -- I don't  
22: think this was prepared by Anita  
23: Ducca.

24: BY MR. PIFKO:

00302

01: Did I read that correctly?  
02: A. Yes, you did.  
03: Q. Is that consistent with your  
04: understanding of --  
05: A. Yes, it is.

06: Q. -- why the guidelines were  
07: taken down?

08: A. Yes, it is.

09: (Document marked for  
10: identification as Exhibit  
11: HDA-Kelly-32.)

12: BY MR. PIFKO:

13: Q. Handing you what's marked as  
14: Exhibit 32. It's a two-page document  
15: Bates-labeled HDA\_MDL\_00081415 and 416.

16: Take a minute to review this

17: and let me know when you're done.

18: A. Okay.

19: Q. I just wanted to direct your

20: attention to second paragraph on the

21: first page.

22: "The regulatory affairs

23: committee and federal government affairs

24: committee told its members that there was

p. 00300

p. 00302

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00303

01: some consideration about updating the  
02: guidelines, but ultimately it was decided  
03: that they would be replaced with a  
04: statement to the effect that the industry  
05: is very committed to compliance."  
06: And there was a draft that  
07: was exchanged with members, agree?  
08: MR. WEINSTEIN: Objection to  
09: form.

10: THE WITNESS: Yes, that's

11: what this says.

12: BY MR. PIFKO:

13: Q. And that's what happened?  
14: A. I don't recall exactly what  
15: the process was between the ICGs coming  
16: down and a statement going up in its  
17: stead. But again, I have no reason to  
18: doubt that this process described here is  
19: accurate.  
20: Q. Handing you what's marked as  
21: Exhibit 33.  
22: (Document marked for  
23: identification as Exhibit  
24: HDA-Kelly-33.)

00305

01: Government Accountability Office about  
02: the -- its concerns about the DEA,  
03: correct?  
04: MR. WEINSTEIN: Objection to  
05: form.  
06: THE WITNESS: I don't know  
07: if that was part of that. I  
08: didn't -- was that part of that?  
09: BY MR. PIFKO:  
10: Q. Irrespective of that  
11: document, I'm just asking you --  
12: A. It is --  
13: Q. -- if that was another  
14: tactic that HDA was investigating?  
15: MR. WEINSTEIN: Objection to  
16: form.  
17: THE WITNESS: Again, we  
18: don't have the ability to launch  
19: GAO investigations, but we can  
20: talk to members of Congress who  
21: may think that's a correct course  
22: of action.  
23: BY MR. PIFKO:  
24: Q. Okay. And so that was

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00304

01: BY MR. PIFKO:  
02: Q. For the record Exhibit 33 is  
03: a Word document that was -- file name --  
04: name GAO Meeting on DEA Draft, TPs,  
05: 092010. It's Bates-labeled HDMA -- or  
06: sorry, HDA\_MDL\_000139905 to 000139910.  
07: Take a minute to review it and let me  
08: know when you're done.  
09: A. Okay.  
10: Q. You done?  
11: A. Yes.  
12: Q. So if you recall, we were  
13: looking earlier at a document, that  
14: document about the strategy for testimony  
15: on the Hill. Do you recall that?  
16: A. Yes, I do.  
17: Q. And one of the tactics that  
18: was discussed there was getting a  
19: congressperson to talk to the DEA to  
20: address the industry's concerns. Do you  
21: recall that?  
22: A. I do.  
23: Q. Another tactic that HDA was  
24: considering was communicating with the

00306

01: something that HDA was exploring about  
02: whether there could be a dialogue with  
03: GAO about the industry's concerns about  
04: the DEA, correct?  
05: MR. WEINSTEIN: Objection to  
06: form.  
07: THE WITNESS: Again I don't  
08: know if we -- if we specifically  
09: requested that. I know that this  
10: GAO report was requested by  
11: members of Congress.  
12: BY MR. PIFKO:  
13: Q. Okay. These are talking  
14: points about the industry's concerns that  
15: would be presented at the GAO, correct?  
16: A. Correct.  
17: Q. So, this talks about, I'm on  
18: the second page of the document. It  
19: first says, "Background on HDMA, who we  
20: represent, show the graphic of wholesale  
21: distribution we have online, number of  
22: members, et cetera."  
23: So in connection with the  
24: discussion, there would have been a

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00307

01: discussion about who the members are that  
02: are represented by HDA, correct?  
03: MR. WEINSTEIN: Objection to  
04: form.  
05: THE WITNESS: Yes.  
06: BY MR. PIFKO:  
07: Q. And then this identifies  
08: recent concerns. Do you see that  
09: discussion in Section 4 here?  
10: A. Yes, I see Section 4.  
11: Q. It says, "Recently DEA has  
12: exerted extreme pressure on wholesale  
13: distributors to take controlled  
14: substances suspicious order  
15: responsibilities much further."  
16: Do you see that?  
17: A. I do.  
18: Q. Do you agree that was a  
19: concern from HDA and its distributor  
20: members?  
21: MR. WEINSTEIN: Objection to  
22: form.  
23: THE WITNESS: It was.  
24: BY MR. PIFKO:

00309

01: was -- that was an event or a  
02: process that DEA had undertaken.  
03: I have no reason to doubt that  
04: that was part of the pattern of  
05: concern.  
06: BY MR. PIFKO:  
07: Q. And then another part of  
08: that concern was that that action was  
09: followed by revoking several  
10: registrations in 2007, agreed?  
11: A. That's what is stated, yes.  
12: Q. And then it says, "HDA went  
13: to great lengths to seek resolution with  
14: DEA." And then it's got some bullet  
15: points. Some of them are discussing the  
16: industry compliance guidelines we just  
17: discussed, agree?  
18: A. Yes.  
19: Q. And then in all bold, all  
20: caps, it says, "Despite these efforts,  
21: DEA has revoked another wholesale  
22: distributor registration spring 2010."  
23: Do you see that?  
24: A. I do.

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p. 00309

00308

01: Q. And then it gives bullet  
02: points elaborating on that concern,  
03: agree?  
04: A. It appears to, yes.  
05: Q. And the first one is, "DEA  
06: invited members of the distribution  
07: industry, firm by firm to a meeting where  
08: DEA point blank told them that they  
09: should identify customers who are selling  
10: for illicit purposes, e.g., pill mills, or  
11: illicit internet pharmacies such as those  
12: filling orders without a prescription."  
13: Do you see that?  
14: A. I do.  
15: Q. So that was part of the  
16: basis for the HDA and its members'  
17: concerns about DEA's pressures to take  
18: controlled substances order  
19: responsibilities further?  
20: MS. WICHT: Objection to  
21: form.  
22: MR. WEINSTEIN: Objection to  
23: form.  
24: THE WITNESS: Again, that

00310

01: Q. So the DEA's revoking or  
02: suspending registrations, was a  
03: significant concern for HDA and its  
04: members?  
05: MR. WEINSTEIN: Objection to  
06: form.  
07: THE WITNESS: Yes.  
08: BY MR. PIFKO:  
09: Q. If you go to the page --  
10: they are not numbered here --  
11: HDA\_MDL\_000139907. There's a heading,  
12: "Key Concerns."  
13: A. I see it.  
14: Q. So this summarizes key  
15: concerns that HDA and its members had  
16: with respect to the DEA's enforcement  
17: activities, correct?  
18: MR. WEINSTEIN: Objection to  
19: form.  
20: THE WITNESS: Yes, at the  
21: time.  
22: BY MR. PIFKO:  
23: Q. So one of them is, it says,  
24: "It's unreasonable for DEA to expect a

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00311

01: distributor to seek information about  
02: pharmacies that they are barred from,  
03: either through confidential business  
04: practices or legal restrictions, e.g.,  
05: HIPAA."  
06: Do you see that?  
07: A. Yes, I do.  
08: Q. That was a key concern?  
09: MS. CHARLES: Objection to  
10: form.  
11: THE WITNESS: Again, this  
12: means that they were unreasonable  
13: for DEA to expect distributors to  
14: get prescribing information that  
15: would have been HIPAA protected.  
16: BY MR. PIFKO:  
17: Q. And then it says under here,  
18: "DEA has asked distributors where  
19: pharmacies' prescriptions came from, also  
20: to research the pharmacies' customer  
21: base.  
22: So was that -- that was the  
23: basis for that concern?  
24: A. I think that's part of the

00313

01: Q. I want to direct your  
02: attention back to Exhibit 31, on the  
03: first page of it. Are you there?  
04: A. I am.  
05: Q. There's a note about a  
06: conference call with the executive  
07: committee on April 6, 2012.  
08: Do you see that?  
09: A. Yes.  
10: Q. It says, "President John  
11: Gray thanked the executive" -- "thanked  
12: the executive committee members for  
13: agreeing to participate in a conference  
14: call to address recent activity with  
15: respect to suspicious order monitoring  
16: and the role of healthcare distributors."  
17: Do you see that?  
18: A. I do.  
19: Q. And then it says, "HDMA has  
20: testified before Congress and prepared an  
21: amicus brief for filing with the federal  
22: court of appeals in the Cardinal v.  
23: Holder litigation."  
24: Do you see that?

p. 00311

p. 00313

00312

01: concern, yes.  
02: Q. Then it says, "Even if the  
03: distributor does their due diligence  
04: regarding a customer, there's no  
05: guarantee that the pharmacy will tell the  
06: truth."  
07: That was another concern?  
08: A. That is -- that is a  
09: concern, yes.  
10: Q. Then here it says, again,  
11: "DEA used an extreme tactic by suspending  
12: a license. This action is intended for  
13: when there is an imminent threat to the  
14: public health and safety."  
15: Do you see that?  
16: A. Yes.  
17: Q. So again, this tactic of  
18: suspending or revoking registrations was  
19: a critical concern for HDMA and its  
20: members, correct?  
21: MR. WEINSTEIN: Objection to  
22: form.  
23: THE WITNESS: Yes.  
24: BY MR. PIFKO:

00314

01: A. I do.  
02: Q. HDA's members authorized HDA  
03: to file that amicus brief in the federal  
04: court of appeals, correct?  
05: A. They did.  
06: Q. Okay. And then it says  
07: here, "Chairman Moody and Vice Chairman  
08: Neu expressed concern about the trend of  
09: recent developments and thought it time  
10: for executive committee to review recent  
11: events and plot a course going forward."  
12: Do you see that?  
13: A. I do.  
14: Q. Okay. You understand  
15: Chairman Moody is from Cardinal?  
16: A. No. Chairman Moody at the  
17: time was Dave Moody from North Carolina  
18: Mutual.  
19: Q. Okay. That is another  
20: distributor member?  
21: A. That is.  
22: Q. Okay. And Chairman Neu was  
23: from AmerisourceBergen?  
24: A. Vice Chairman Neu at the

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00315

01: time was from AmerisourceBergen, yes.  
02: Q. Vice chairman.  
03: (Document marked for  
04: identification as Exhibit  
05: HDA-Kelly-34.)  
06: BY MR. PIFKO:  
07: Q. Handing you what's marked as  
08: Exhibit 34. Take a minute to review that  
09: and let me know when you're done.  
10: A. Okay.  
11: Q. To put some time frame  
12: context in this, are you aware that on  
13: February 6, 2012, the DEA had announced  
14: that it suspended the license of Cardinal  
15: Health's Lakeland distribution center?  
16: MR. WEINSTEIN: Objection to  
17: form.  
18: THE WITNESS: That sounds  
19: familiar.  
20: BY MR. PIFKO:  
21: Q. Okay. And so I just read  
22: you from Exhibit 31 about the conference  
23: call that's a few months later, two  
24: months after that happened. Do you

00317

01: form.  
02: THE WITNESS: Yes.  
03: BY MR. PIFKO:  
04: Q. And so then, there was a  
05: decision that they needed to plot a  
06: course going forward as it says in  
07: Exhibit 31, agree?  
08: A. Yes, that's what it says.  
09: Q. Okay. So after that call,  
10: John Gray says here that he met with  
11: legal counsel Bob Barnett and Richard  
12: Cooper from Williams & Connolly in  
13: Washington DC, agreed?  
14: A. Yes.  
15: Q. And he comments -- I'm  
16: reading from Exhibit 34 -- "Both  
17: attorneys were very helpful several years  
18: ago in initializing our original meetings  
19: with DEA after the first outbreak of  
20: ISOs" -- those are suspension orders,  
21: correct?  
22: A. Correct.  
23: Q. "Given their experience and  
24: knowledge of the political and legal

p. 00315

p. 00317

00316

01: recall we just discussed that?  
02: A. Yes.  
03: Q. And so Exhibit 34 says,  
04: "After our last conference call on  
05: April 6th" -- referring to that  
06: conference call, agreed?  
07: A. Yes. April 20th, yeah.  
08: Q. Okay. And for the record  
09: Exhibit 34 is an e-mail from John Gray  
10: dated Friday, April 20, 2012, to Ken  
11: Couch, Dale Smith, David Neu, Paul  
12: Julian, Mike Kaufmann, David Moody and  
13: Ted Scherr, copying Richard Frank from  
14: HDA's outside counsel.  
15: Agree?  
16: A. Yes.  
17: Q. Sorry, I can't remember if I  
18: read the Bates number for this one.  
19: 00 -- HDA\_MDL\_00215234 to 236.  
20: So at this executive  
21: committee conference call, there was  
22: concerns raised by the members again  
23: about DEA's enforcement activity. Agree?  
24: MR. WEINSTEIN: Objection to

00318

01: aspects of dealing with DEA, we updated  
02: them on the industry's recent concerns  
03: with DEA's latest efforts to thwart drug  
04: diversion and abuse. Attached is a brief  
05: summary of our discussion and conclusions  
06: with several possible courses of action  
07: HDMA could take. The entire list of  
08: ideas is not necessarily mutually  
09: exclusive, but does represent a wide  
10: range of political actions the  
11: association and the industry may consider  
12: in an effort to alter the present  
13: direction DEA is taking with respect to  
14: suspicious order monitoring."  
15: Did I read that correctly?  
16: A. You -- potential options,  
17: actions, not political actions.  
18: Q. Sorry.  
19: A. That's okay.  
20: Q. So these are the same Bob  
21: Burnett and Richard Cooper that we saw  
22: who were participating in the meetings  
23: with DEA with respect to the industry  
24: compliance guidelines, correct?

p. 00316

p. 00318

00319

01: A. Correct.  
02: Q. And then the attached, the  
03: following three pages of Exhibit 34 is  
04: this document that says, according to the  
05: e-mail, it's, "DEA options memorandum,  
06: J. Gray edits," do you see that on the  
07: first page? On the header of the e-mail,  
08: that's what the attached document is?  
09: A. Yes, yes, yes, yes, yes.  
10: Q. So then it's a memo from  
11: Mr. Gray to the HDMA executive committee  
12: dated April 20, 2012. Agree?  
13: A. Yes.  
14: Q. And who is on the executive  
15: committee at this time?  
16: A. At this time it is Ken Couch  
17: from Smith Drug, Dale Smith from  
18: HD Smith, Dave Neu from  
19: AmerisourceBergen, Paul Julian from  
20: McKesson, Mike Kaufmann from Cardinal,  
21: David Moody from North Carolina Mutual  
22: and Ted Scherr from Dakota Drug.  
23: Q. And so then this -- the  
24: first paragraph says, again, some of the

00321

01: process could help at least get  
02: some type of notice and comment  
03: back and forth with the DEA and  
04: maybe securing that. If we  
05: weren't successful in having the  
06: DEA do that through their notice  
07: and comment process, to maybe  
08: request that legislatively.  
09: BY MR. PIFKO:  
10: Q. And what specifically would  
11: the legislation include?  
12: MR. WEINSTEIN: Objection to  
13: form, foundation, scope.  
14: THE WITNESS: Well, again,  
15: we did -- we didn't get into  
16: specifics of -- of what that  
17: legislation -- we never drafted  
18: legislation at that point in time.  
19: But we were looking at  
20: basically their interaction with  
21: the registrant community on  
22: suspicious orders.  
23: BY MR. PIFKO:  
24: Q. Later down the road you

p. 00319

p. 00321

00320

01: same stuff that's in the e-mail. And  
02: then the second paragraph says,  
03: "Mr. Barnett and Mr. Cooper felt that new  
04: legislation to specifically address our  
05: concerns with DEA was highly unlikely to  
06: be successful due to limited momentum in  
07: that direction."  
08: Do you see that?  
09: A. I do.  
10: Q. You understood that one of  
11: the things HDA and its members were  
12: considering was new legislation to  
13: address the concerns with DEA?  
14: MR. WEINSTEIN: Objection to  
15: form.  
16: MR. CRAWFORD: Objection to  
17: form.  
18: THE WITNESS: We had -- we  
19: had -- again, one of the concerns  
20: we had with the provisions that  
21: DEA was implementing is that there  
22: was no due process.  
23: And so we thought that  
24: possibly requesting legislative

00322

01: ultimately did participate in what became  
02: the Marino/Blackburn bill, correct?  
03: A. That's correct.  
04: MS. WICHT: Object to the  
05: form of the question.  
06: BY MR. PIFKO:  
07: Q. Was that an outcrop of this  
08: discussion?  
09: MR. WEINSTEIN: Objection to  
10: form.  
11: THE WITNESS: Not this  
12: specific discussion.  
13: BY MR. PIFKO:  
14: Q. Okay. But it -- it grew  
15: from these same concerns about DEA's  
16: enforcement action and suspension of  
17: licenses, correct?  
18: MR. WEINSTEIN: Objection to  
19: form.  
20: MS. CHARLES: Objection.  
21: BY MR. PIFKO:  
22: Q. Or registrations, sorry?  
23: MR. WEINSTEIN: Same  
24: objection.

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00323

01: THE WITNESS: It was part of  
02: that, yes.

03: BY MR. PIFKO:

04: Q. Okay. So another thing  
05: Mr. Gray writes in this memo is that  
06: "Paul Barnett and Rich Cooper from  
07: Williams & Connolly felt that the  
08: industry may be better off asserting DEA  
09: actions by taking even stronger  
10: compliance measures."

11: Do you see that?

12: A. Yes.

13: Q. Did I read that correctly?

14: A. You did.

15: Q. Were you part of these  
16: discussions?

17: A. I was in this meeting at  
18: Williams & Connolly, yes.

19: Q. Okay. And so one of the  
20: recommendations they said is that HDA's  
21: members could avert action by improving  
22: their compliance systems?

23: MR. WEINSTEIN: Objection to  
24: form.

00325

01: A. Yes.  
02: Q. And we know ultimately from  
03: Exhibits 30 and 31 that -- that  
04: ultimately the ICGs were replaced with a  
05: statement on diversion, rather than  
06: updated?

07: A. Yes.

08: Q. Another potential action is  
09: to re-file the HDMA amicus brief in  
10: Cardinal Health v. DEA, do you see that?

11: A. I do. In the appellate

12: case.

13: Q. So are you familiar with the  
14: procedure? Why was there a need to  
15: re-file that brief?

16: MR. WEINSTEIN: Objection to  
17: form. Foundation.

18: THE WITNESS: Again, I'm not  
19: familiar -- I don't know what the  
20: discussion was. That was a  
21: discussion with outside counsel  
22: about that, and with the board.  
23: So I don't -- I don't know what  
24: the rationale was for that.

p. 00323

p. 00325

00324

01: THE WITNESS: That's -- I  
02: mean, it says that they felt they  
03: were better off averting DEA  
04: actions by taking even stronger  
05: compliance measures. That's  
06: what's written in the memo.

07: BY MR. PIFKO:

08: Q. And that's what was  
09: discussed at the meeting? You said you  
10: were there?

11: A. I was there, yes.

12: Q. And that's consistent with  
13: what was discussed there?

14: A. Yes.

15: Q. Let's go to Page 2 of the  
16: attachment, I guess 3 of the document.  
17: One of the other potential -- it has  
18: other potential actions discussed here.  
19: Do you see that?

20: A. I do.

21: Q. "Update HDMA industry  
22: compliance guidelines." That was  
23: something else that was being discussed  
24: at that time?

00326

01: BY MR. PIFKO:  
02: Q. Are these notes consistent  
03: with your understanding of the  
04: discussions that happened at that meeting  
05: since you were there?

06: MR. WEINSTEIN: Objection to  
07: form.

08: THE WITNESS: Yes.

09: BY MR. PIFKO:

10: Q. Okay. Another potential  
11: action, again going to Page 2 of the  
12: notes, is, "Seek guidance from a  
13: well-respected public relations firm to  
14: improve industry image."

15: This was something else that  
16: was considered?

17: A. Yes.

18: Q. Did you ever move forward  
19: with that option?

20: A. We did.

21: Q. And who did you retain?

22: A. Processwise, after this  
23: meeting, we've been through -- we've been  
24: engaged with several public relations

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00327

01: firm. But I think this one led to an  
02: initial engagement with APCO.  
03: Q. And they developed the  
04: crisis playbook, right?  
05: A. That -- yes, that was their  
06: development, yes. I don't know if that's  
07: the specific name of it. But it was --  
08: Q. But you're familiar with  
09: that document?  
10: A. Yes, that they developed,  
11: yes.  
12: Q. Okay. Another option here  
13: is, "Petition DEA to put their  
14: expectations into a regulation."  
15: Can you explain what that  
16: was?  
17: A. Again, that was -- that was  
18: the -- basically the process of -- you  
19: know, the letters constituted the only  
20: directives that we were getting from DEA  
21: at the time, the letter to the  
22: registrants. There was no process for  
23: notice and comment in the development of  
24: those letters. They were just basically

00329

01: effective in this regard but would  
02: unlikely" -- "be unlikely to happen prior  
03: to the 2012 elections."  
04: A. That's what it says, yes.  
05: Q. How would you use a  
06: congressional hearing to achieve the same  
07: things that a legal journal article would  
08: achieve?  
09: A. I'm not exactly sure why --  
10: why that was typed up that way. But,  
11: again, it was to basically get some of  
12: these concerns addressed in an open forum  
13: for kind of probative discussion about,  
14: you know, concerns we had and maybe  
15: suggestions about processes that would  
16: kind of more enlist the support of the  
17: registrant community in addressing  
18: suspicious orders.  
19: Q. Were you involved in  
20: subsequent phone discussions or in person  
21: discussions with HDA's executive  
22: committee after this memo was sent out?  
23: MR. WEINSTEIN: Objection to  
24: form.

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00328

01: delivered.  
02: We thought that if we  
03: basically petitioned for a regulation to  
04: go through a notice and comment  
05: development process where the DEA would  
06: basically draft a regulation, they would  
07: notice it for public comment, there would  
08: be public comment. They would review the  
09: public comments. They would then  
10: consider the public comment and finalize  
11: the regulation.  
12: But you would at least have  
13: a process by which you could provide  
14: concerns, suggestions, et cetera to the  
15: DEA for the development of that  
16: regulation.  
17: Q. Another thing is to develop  
18: a legal journal article concerning the  
19: ambiguity of DEA expectations and  
20: diversion prevention tactics. That was  
21: something else that you discussed?  
22: A. We -- it did, yes.  
23: Q. And it said, "A  
24: congressional hearing may be more

00330

01: THE WITNESS: I don't recall  
02: the specific process of what  
03: happened after this. I know that  
04: this was something that the  
05: executive committee asked us to  
06: do. We did. We followed up with  
07: them. We probably reported on it  
08: at the next executive committee  
09: meeting.  
10: BY MR. PIFKO:  
11: Q. But do you recall having any  
12: discussions with the executive committee  
13: members about these options?  
14: MR. WEINSTEIN: Objection to  
15: form.  
16: THE WITNESS: No. Again,  
17: not prior to the executive  
18: committee meeting.  
19: BY MR. PIFKO:  
20: Q. Are you aware that -- of  
21: whether any of the executive committee  
22: members asked how they could improve  
23: their compliance measures consistent with  
24: the advice that Bob Barnett and Rich

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00331

01: Cooper from Williams & Connolly provided?  
02: MR. WEINSTEIN: Objection to  
03: form. Foundation. Scope.  
04: THE WITNESS: I'm not aware  
05: of any specifics, suggestions or  
06: conversations.  
07: BY MR. PIFKO:  
08: Q. To your knowledge did any of  
09: them ask if there would be any  
10: suggestions on how their compliance  
11: efforts could be improved?  
12: MR. WEINSTEIN: Objection to  
13: form. Foundation. Scope.  
14: THE WITNESS: Again, I don't  
15: know that anybody asked. We did  
16: provide some suggestions that were  
17: provided by Mr. Cooper and  
18: Mr. Barnett. But again, I don't  
19: recall. And the correspondence  
20: would have been with Mr. Gray  
21: directly anyhow.  
22: (Document marked for  
23: identification as Exhibit  
24: HDA-Kelly-35.)

00333

01: committee, federal government affairs  
02: committee, individuals, and then to  
03: basically brainstorm some suggestions for  
04: additional things that we could do to  
05: continue to move forward on addressing  
06: suspicious orders and improving  
07: interaction with the DEA.  
08: Q. So that task force is an  
09: outcrop of some of the types of  
10: discussions that you had in Exhibit 34?  
11: A. Yeah. It's not specifically  
12: referenced here. But yeah, it's just an  
13: ongoing discussion and dialogue with the  
14: membership about what we can do to  
15: improve.  
16: Q. Who was on that task force  
17: as far as the HDA's distributor members?  
18: A. So if you look at the top,  
19: AmerisourceBergen, Cardinal Health,  
20: Mutual Drug, Smith Drug, HD Smith, Henry  
21: Schein, I think was at one point  
22: involved.  
23: Q. McKesson?  
24: A. McKesson, sorry, yes. And

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00332

01: BY MR. PIFKO:  
02: Q. I'm handing you what's  
03: marked as Exhibit 35. It's an e-mail  
04: from you dated December 19, 2013,  
05: Bates-labeled CAH\_MDL2804\_01110712  
06: through 715.  
07: Take a moment to review this  
08: and let me know when you're done.  
09: A. Okay.  
10: Q. At some point a drug  
11: diversion DEA strategy task force was  
12: formed, correct?  
13: A. Yes.  
14: Q. Are you familiar with the  
15: formation of that task force?  
16: A. I am.  
17: Q. Were you involved in the  
18: formation of that task force?  
19: A. We were. I was.  
20: Q. When was that formed?  
21: A. I want to say in 2013 at  
22: some point. It was a amalgam of a  
23: variety of different committees that had  
24: been involved. Regulatory affairs

00334

01: then we had a -- after we had engaged  
02: APCO at the time there, they came and  
03: participated.  
04: Q. And so you had regular  
05: meetings with this task force?  
06: A. This -- I believe this task  
07: force met once.  
08: Q. Okay. And so this is a list  
09: of action items that came out of the task  
10: force meeting?  
11: A. Recommendations, yes.  
12: Q. Okay. And then the attached  
13: document, summary of recommendations?  
14: A. Right.  
15: Q. From December 11, 2013, task  
16: force meeting. That's a summary of the  
17: items that the group came up with that  
18: you could move forward with?  
19: MR. WEINSTEIN: Objection to  
20: form.  
21: THE WITNESS: Yes.  
22: Sorry.  
23: Yes, with the -- the  
24: specific action items highlighted.

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00335

01: BY MR. PIFKO:  
02: Q. And you typed this up?  
03: A. I believe I typed the  
04: e-mail, and then the notes were kind of  
05: probably a shared product of the  
06: government affairs staff that  
07: participated.  
08: Q. Okay. But you ultimately  
09: sent it out to everybody?  
10: A. I sent it out, yes.  
11: Q. Did you have an official  
12: title or role with this task force, like  
13: chairman or --  
14: A. No.  
15: Q. -- coordinator?  
16: A. No, there was -- and again  
17: it was an ad hoc group of various  
18: members. It was set up to do one thing,  
19: and this was the one thing.  
20: Q. So going to the attachment,  
21: CAH\_MDL2804\_01110714. Are you there?  
22: A. I am.  
23: Q. So Item 2 is, "Address  
24: specific challenges and interactions

00337

01: to Prevent Abuse of Medicines?  
02: A. That was a coalition that  
03: formed, I want to say in about 2012, to  
04: address abuse issues, kind of across the  
05: supply chain. So they had formed -- the  
06: American Medical Association, the members  
07: that were listed there were participants.  
08: Cardinal Health had suggested possibly  
09: including HDA as a member, because other  
10: associations were involved.  
11: THE VIDEOGRAPHER:  
12: Mr. Kelly, you keep hitting --  
13: THE WITNESS: I'm sorry.  
14: BY MR. PIFKO:  
15: Q. So then Item 2 says,  
16: "Address specific challenges and  
17: interactions with DEA."  
18: Do you see that?  
19: A. I do.  
20: Q. Then it says, "Issue  
21: statement of support for Marino/Blackburn  
22: legislation when introduced."  
23: Do you see that?  
24: A. I do.

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00336

01: with" -- "with DEA."  
02: Do you see that?  
03: A. Yes.  
04: Q. So you have this broken out  
05: into different types of communications  
06: like one with the media, public  
07: officials, another with DEA, and another  
08: with a branding campaign; is that  
09: correct?  
10: MR. WEINSTEIN: Objection to  
11: form.  
12: THE WITNESS: Yeah.  
13: BY MR. PIFKO:  
14: Q. Okay. Sorry, I pointed you  
15: to 2, but I want to ask you about 1 for a  
16: minute.  
17: A. Okay.  
18: Q. So in 1, there's a  
19: discussion about joining with various  
20: other industry groups?  
21: A. Mm-hmm.  
22: Q. Is that correct?  
23: A. Yes.  
24: Q. Okay. What's the Alliance

00338

01: Q. Okay. So that hadn't yet  
02: been introduced at this time?  
03: A. I don't know the specific  
04: introduction date, but I would deduce  
05: from this that obviously it had not.  
06: Q. Okay. Was the -- that  
07: legislation drafted out of the HDMA?  
08: A. No. I believe  
09: Mr. Blackburn -- or I'm sorry, Mr. Marino  
10: was moving forward with that issue, had  
11: requested feedback from a variety of  
12: constituencies, and was in the process of  
13: kind of fleshing it out.  
14: Q. When was the first time you  
15: became aware of that bill or that  
16: legislation?  
17: A. It -- it might have been at  
18: this -- at this meeting. One of our  
19: member companies had been contacted by  
20: Mr. Marino about participating in the --  
21: in the kind of the general drafting  
22: process of -- of that bill. And it was  
23: suggested that we -- we work with -- or  
24: HDA work with Congressman Marino and

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00339

01: Congresswoman Blackburn.  
02: Q. Do you know which member  
03: company it was?  
04: A. It was Cardinal.  
05: Q. Okay. So Mr. Marino had  
06: reached out to Cardinal and asked them to  
07: assist in drafting this bill?  
08: A. That's my understanding.  
09: Q. And then they reached out to  
10: you and asked HDA to participate?  
11: A. They did.  
12: Q. And did HDA end up providing  
13: any drafting on the bill?  
14: A. We provided feedback on  
15: drafts that they -- they would -- that  
16: they would basically share drafts with  
17: us. I don't know if it was in advance of  
18: the actual introduction. But they go  
19: through iterative processes of kind of  
20: taking comments and providing subsequent  
21: drafts. We did participate in that  
22: process.  
23: Q. Do you know who -- who  
24: specifically at Cardinal did you interact

00341

01: for certain.  
02: BY MR. PIFKO:  
03: Q. Do you know if Linden Barber  
04: was involved in the Marino/Blackburn  
05: bill?  
06: MR. WEINSTEIN: Same  
07: objections.  
08: MS. WICHT: Object to form.  
09: THE WITNESS: I don't know  
10: initially. It was a multi-year  
11: process.  
12: BY MR. PIFKO:  
13: Q. Do you know if any other HDA  
14: distributor members were involved in  
15: discussions with Marino at that time  
16: concerning the bill?  
17: MS. WICHT: Objection to  
18: form.  
19: MR. WEINSTEIN: Objection to  
20: form, foundation, scope.  
21: THE WITNESS: At that time I  
22: do not.  
23: BY MR. PIFKO:  
24: Q. How about later?

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00340

01: with on that issue?  
02: MS. WICHT: Objection to  
03: form.  
04: THE WITNESS: Connie  
05: Woodburn was the government  
06: affairs person for Cardinal at the  
07: time.  
08: BY MR. PIFKO:  
09: Q. Okay. But did you interact  
10: with anyone else from Cardinal?  
11: A. Not specifically with regard  
12: to this.  
13: Q. Okay. Did -- do you -- do  
14: you know, were there other people who  
15: maybe you didn't talk to but that would  
16: have been copied on e-mails or there are  
17: things would have been forwarded from  
18: Cardinal with respect to the  
19: Marino/Blackburn bill?  
20: MS. WICHT: Objection to  
21: form.  
22: MR. WEINSTEIN: Objection to  
23: form, foundation, scope.  
24: THE WITNESS: I can't say

00342

01: MS. WICHT: Objection to  
02: form.  
03: MR. WEINSTEIN: Same  
04: objections.  
05: THE WITNESS: Well, as soon  
06: as -- as soon as HDA basically  
07: endorsed the -- the initiative, I  
08: think the entire membership was  
09: supportive of the -- the prospect  
10: of that legislation.  
11: BY MR. PIFKO:  
12: Q. Okay. And obviously the  
13: entire member -- or the -- the members we  
14: just discussed here having been involved  
15: with this drug diversion task force all  
16: knew about it because it was discussed at  
17: this meeting, correct?  
18: MR. WEINSTEIN: Objection to  
19: form.  
20: MS. WICHT: Foundation.  
21: THE WITNESS: Correct.  
22: BY MR. PIFKO:  
23: Q. So it says here, "This  
24: legislation would establish definitions

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00343

01: and parameters for specific provisions in  
02: the Controlled Substances Act pertaining  
03: threats to 'public health and safety' and  
04: 'imminent danger.'  
05: "In addition, this  
06: legislation would allow DEA registrants  
07: the opportunity to submit a corrective  
08: action plan to address specific concerns  
09: that could otherwise lead to the  
10: suspension or revocation of a  
11: registration."  
12: Did I read that correctly?  
13: A. You did.  
14: Q. Is that consistent with your  
15: understanding about what this bill would  
16: do or legislation would do?  
17: MR. WEINSTEIN: Objection to  
18: form.  
19: THE WITNESS: It is. There  
20: was another provision ultimately  
21: of the bill. But it was a  
22: draft -- a report from the  
23: government on the effectiveness of  
24: the government's efforts to

00345

01: constitutes imminent danger.  
02: BY MR. PIFKO:  
03: Q. If we go to the next page of  
04: your notes. Another action item that  
05: this task force was working on was Item  
06: D, "Anticipate and develop responses to  
07: Marino/Blackburn opponents"?  
08: A. I see that.  
09: Q. That was something that this  
10: task force was working on, correct?  
11: A. Well, again, it wasn't one  
12: of the action items. But it was -- it  
13: basically was something that we  
14: discussed. It was, you know, how do  
15: we -- how do we explain what this does if  
16: people are concerned that it's somehow  
17: diminishing the capacity of the DEA.  
18: Q. Item 3 here is, "Engage in  
19: initial HDMA public relations branding  
20: campaign."  
21: Do you see that?  
22: A. I do.  
23: Q. Item C there says, "Utilize  
24: material prepared by APCO to begin

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00344

01: address prescription drug abuse  
02: and diversion.  
03: BY MR. PIFKO:  
04: Q. Okay. So it's your  
05: understanding there were changes to the  
06: requirements for suspending a  
07: registration, and there was another  
08: component to the legislation that  
09: involved a report?  
10: MR. WEINSTEIN: Objection to  
11: form.  
12: BY MR. PIFKO:  
13: Q. Is that correct?  
14: MR. WEINSTEIN: Same  
15: objection.  
16: THE WITNESS: So, basically  
17: the crux of it was to provide a  
18: definition for the threshold for  
19: immediate suspension orders.  
20: Which was not anywhere in law.  
21: The immediate -- the immediate --  
22: imminent danger was not defined.  
23: And so we basically sought to  
24: establish a threshold for what

00346

01: targeted media outreach."  
02: Do you see that?  
03: A. I do.  
04: Q. That's the material that  
05: includes the crisis playbook, correct?  
06: MR. WEINSTEIN: Objection to  
07: form.  
08: THE WITNESS: Again, I'm not  
09: exactly sure. The crisis playbook  
10: was never -- it was a draft format  
11: that was never released. It was  
12: never published. It was -- we  
13: didn't do anything with it. But  
14: that was a product that APCO did  
15: provide us in their initial  
16: engagement.  
17: BY MR. PIFKO:  
18: Q. Okay. And you shared that  
19: product with the HDA's members, correct?  
20: MS. CHARLES: Objection to  
21: form.  
22: MR. WEINSTEIN: Objection to  
23: form.  
24: THE WITNESS: Again, I don't

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00347

01: recall. Our communications  
02: department handled all that  
03: interface with APCO.  
04: BY MR. PIFKO:  
05: Q. You wouldn't have any reason  
06: to dispute that it was shared with  
07: members?  
08: MR. WEINSTEIN: Objection to  
09: form.  
10: MS. CHARLES: Objection to  
11: form.  
12: MS. ROLLINS: Objection to  
13: form.  
14: THE WITNESS: I can't say  
15: one way or another.  
16: BY MR. PIFKO:  
17: Q. You would agree if it was  
18: produced by one of the members in this  
19: litigation, it must have been shared with  
20: them obviously, right?  
21: MR. WEINSTEIN: Objection to  
22: form.  
23: THE WITNESS: Yes.  
24:

00349

01: danger. This manufacturer has reached  
02: out to other manufacturers as well to  
03: raise concerns."  
04: Do you see that?  
05: A. I do.  
06: Q. Did I read that correctly?  
07: A. You did.  
08: Q. Okay. And then Kristen is  
09: asking Linden to let her know thoughts on  
10: the suggestions from these manufacturers,  
11: agree?  
12: A. Yes.  
13: MR. WEINSTEIN: Objection to  
14: form.  
15: BY MR. PIFKO:  
16: Q. Okay. And the suggested  
17: changes from the manufacturer's attorney  
18: are provided on the second page of this  
19: document, correct?  
20: A. Again, if this was attached  
21: to the e-mail, then, yes, I would agree  
22: that that includes -- was included in the  
23: e-mail.  
24: Q. Okay. And so, she

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00348

01: BY MR. PIFKO:  
02: Q. I'm handing you what's been  
03: marked Exhibit 36.  
04: (Document marked for  
05: identification as Exhibit  
06: HDA-Kelly-36.)  
07: BY MR. PIFKO:  
08: Q. Take a moment to review that  
09: and let me know when you're ready. For  
10: the record, it's a single -- two-page  
11: document, Bates-labeled HDA\_MDL\_000214864  
12: through 4865.  
13: A. Okay.  
14: Q. This is an e-mail from  
15: Kristen Freitas to Linden Barber.  
16: Do you see that?  
17: A. I do.  
18: Q. And it says, "Manufacturer  
19: issue with imminent danger definition."  
20: Do you see that?  
21: A. Yes.  
22: Q. And it says, "We were  
23: contacted by a manufacturer that has  
24: concerns about the definition of imminent

00350

01: paraphrases comments from the  
02: manufacturer's attorney in her e-mail to  
03: Linden Barber. And she says, "My  
04: suggested changes are" -- it basically  
05: says that -- sorry, that, "The first  
06: comment change could be ignored but the  
07: second and third are, in my view,  
08: critical to protect the interest of  
09: virtually all DEA registrants, not just  
10: manufacturers."  
11: Do you see that?  
12: A. Yes.  
13: Q. Would you agree that at some  
14: point the HDA also started working with  
15: manufacturers and members of the Pain  
16: Care Forum on the Marino/Blackburn bill?  
17: MR. WEINSTEIN: Objection to  
18: form.  
19: MS. MACKAY: And foundation.  
20: THE WITNESS: Again, I don't  
21: know that we ever worked with the  
22: Pain Care Forum on this bill. I  
23: know that the manufacturers were  
24: working with Senator Hatch's

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01: office. And the concerns that  
02: were expressing to Senator Hatch  
03: we being expressed by Senator  
04: Hatch's staff to us. And we were  
05: asked to rectify those concerns  
06: moving forward.  
07: BY MR. PIFKO:  
08: Q. The legislation from Senator  
09: Hatch was the same?  
10: MR. WEINSTEIN: Objection to  
11: form.  
12: THE WITNESS: The -- I'm  
13: sorry?  
14: BY MR. PIFKO:  
15: Q. It's the same legislation.  
16: you're dealing with Senator Hatch --  
17: A. It was -- yes, it was -- it  
18: was the senate version of the  
19: Marino/Blackburn bill, Senate Bill 483,  
20: or what became Senate Bill 483.  
21: (Document marked for  
22: identification as Exhibit  
23: HDA-Kelly-37.)  
24:

00353

01: "Re-introduction of Ensuring Patient  
02: Access and Effective Drug Enforcement  
03: Act." That's the Marino/Blackburn bill,  
04: correct?  
05: A. Yes.  
06: Q. Okay. And he then forwards  
07: it to the members of the Pain Care Forum  
08: on the first page.  
09: Do you see that?  
10: A. I do.  
11: Q. And it's got attachments  
12: that are summaries of the bill.  
13: Do you see that on the  
14: header?  
15: A. I do.  
16: Q. Okay. Oh, and she then  
17: says, "Last year, we worked with a number  
18: of you on a letter of support for  
19: legislation introduced in the house and  
20: senate establishing an enforcement  
21: escalation procedure."  
22: Do you see that?  
23: A. Yes.  
24: Q. I'm on the second page of

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00352

01: BY MR. PIFKO:  
02: Q. I'm handing you what's  
03: marked as Exhibit 37. It's a two-page  
04: document, Bates-labeled HDA\_MDL\_000081283  
05: through 284.  
06: Take a minute to review it  
07: and let me know when you're done.  
08: A. Okay.  
09: Q. Who is Jewelyn Cosgrove?  
10: A. She works in the federal  
11: government affairs department at HDA.  
12: Q. Is she someone that reports  
13: to you?  
14: A. She reports to Kristen  
15: Freitas.  
16: Q. And she --  
17: A. Ultimately under my  
18: department, yes.  
19: Q. Okay. So she writes to Burt  
20: Rosen of Purdue and asks for him to share  
21: this with the Pain Care Forum.  
22: Do you see that?  
23: A. Yes.  
24: Q. And it's -- the subject is,

00354

01: that.  
02: A. Yes, yes, yes, yes.  
03: Q. "And then for reference the  
04: two bills were the Ensuring Patient  
05: Access and Effective Drug Enforcement Act  
06: in the House, Representatives Marino,  
07: Blackburn, Welch, Chu; and the Regulatory  
08: Transparency, Patient Access, and  
09: Effective Drug Enforcement Act in the  
10: Senate from Senators Hatch and  
11: Whitehouse."  
12: Do you see that?  
13: A. Yes.  
14: Q. And then later on the  
15: bottom, "With the process moving quickly,  
16: we would like to ask those of you who  
17: signed the senate letter of support from  
18: patient groups last year to consider  
19: supporting the House legislation."  
20: Do you see that?  
21: A. I do.  
22: Q. I'm handing you what's  
23: marked as Exhibit 38.  
24: (Document marked for

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00355

01: identification as Exhibit  
02: HDA-Kelly-38.)  
03: BY MR. PIFKO:  
04: Q. Take a moment to review  
05: Exhibit 38. And let me know when you're  
06: done.  
07: For the record, Exhibit 38  
08: is a four-page document Bates-labeled  
09: HDA\_MDL\_000081651 through 81654.  
10: A. Okay.  
11: Q. This just confirms in  
12: response to Jewelyn's request that the  
13: Pain Care Forum support the bill. Burt  
14: Rosen from Purdue then sends her back the  
15: letter signed and -- with their  
16: endorsement. Agree?  
17: UNIDENTIFIED LAWYER:  
18: Objection. Form.  
19: MR. WEINSTEIN: Objection to  
20: form.  
21: MS. MACKAY: Objection to  
22: form.  
23: THE WITNESS: Yes.  
24: BY MR. PIFKO:

00357

01: Mr. Gray provided for the House of  
02: Representatives energy and commerce  
03: committee subcommittee on health --  
04: A. It --  
05: Q. -- from April 7, 2014?  
06: A. It is.  
07: Q. These are statements that he  
08: made before that committee?  
09: A. This is the written  
10: statement. I don't know how much it  
11: deviated from the oral statement.  
12: Q. Okay. And you participated  
13: in -- in writing this?  
14: A. I helped to prepare it, yes.  
15: Q. Okay. Anyone else?  
16: A. The whole government affairs  
17: team. Probably our communication team as  
18: well.  
19: Q. And in this he's discussing,  
20: the Marino/Blackburn bill, correct?  
21: A. Yes.  
22: Q. Second sentence, "Thank you  
23: for the opportunity to discuss with the  
24: subcommittee important legislation

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00356

01: Q. I'm handing you what's  
02: marked as Exhibit 39.  
03: (Document marked for  
04: identification as Exhibit  
05: HDA-Kelly-39.)  
06: BY MR. PIFKO:  
07: Q. This document is not  
08: Bates-labeled. We printed it from HDA's  
09: website. Take a moment to review it.  
10: For the record, it's a  
11: document that is identified on the first  
12: page as "Statement from John Gray,  
13: President and CEO, Healthcare  
14: Distribution Management Association For  
15: the U.S. House of Representatives Energy  
16: and Commerce Committee, Subcommittee on  
17: Health," dated April 7, 2014. It's a  
18: five-page document.  
19: Have you seen this before?  
20: A. I have.  
21: Q. Did you assist in preparing  
22: this testimony?  
23: A. I did.  
24: Q. And this is testimony that

00358

01: introduced by Representatives Blackburn  
02: and Marino, the Ensuring Patient Access  
03: and Effective Drug Enforcement Act of  
04: 2014," correct?  
05: A. Yes.  
06: Q. Then the next paragraph,  
07: second sentence, he says, "Our industry's  
08: primary mission is to operate the safest  
09: and most secure and efficient supply  
10: chain in the world."  
11: Agree with that statement?  
12: A. I do.  
13: Q. "As part of this mission,  
14: the pharmaceutical industry is committed  
15: to addressing the serious national  
16: epidemic of prescription drug abuse."  
17: Do you see that?  
18: A. I do.  
19: MR. WEINSTEIN: You missed  
20: the word "distribution" in there,  
21: you missed.  
22: MR. PIFKO: Sorry. I'll  
23: read it again for the record.  
24: BY MR. PIFKO:

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00359

01: Q. To be clear, so Mr. Gray  
02: testified before this committee and said  
03: that "the pharmaceutical distribution  
04: industry is committed to addressing the  
05: serious national epidemic of prescription  
06: drug abuse," correct?  
07: A. Yes.  
08: Q. Next paragraph. Mr. Gray  
09: also told the committee, "HDMA's members  
10: are committed to working proactively with  
11: DEA," correct?  
12: A. Yes.  
13: Q. Page 2 of the testimony. He  
14: says, "This is one of the reasons" --  
15: second full paragraph. "This is one of  
16: the reasons why HDMA supports HR 4069."  
17: That's the Marino/Blackburn  
18: bill, correct?  
19: A. Yes.  
20: Q. He says this -- he told the  
21: committee, "This legislation is a timely  
22: and thoughtful approach to addressing the  
23: prescription drug epidemic," correct?  
24: A. Yes.

00361

01: dated -- or dated March 24, 2014.  
02: Bates-labeled MCKMDL00651560 to 651563.  
03: Take a moment to review that  
04: and let me know when you're done.  
05: A. Okay.  
06: Q. So, on the first page  
07: there's an e-mail here from you to Ann  
08: Berkley. Who is Ann Berkley?  
09: A. Ann Berkey was --  
10: Q. Sorry.  
11: A. -- at the time the head of  
12: the government affairs operation at  
13: McKesson.  
14: Q. Okay. And you also reach  
15: out to Connie Woodburn and Rita Norton?  
16: A. Right. The only -- they are  
17: the only company government affairs  
18: representatives from any of our member  
19: companies.  
20: Q. Okay. So you are reaching  
21: out to McKesson, Cardinal, and  
22: AmerisourceBergen, correct?  
23: A. Right.  
24: Q. And at the bottom you say,

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p. 00361

00360

01: Q. And he said, "We will  
02: believe it will foster greater  
03: collaboration, communication and  
04: transparency between" -- "between  
05: industry stakeholders and regulators,  
06: especially the DEA," correct?  
07: A. Correct.  
08: Q. And then in the next  
09: paragraph he talks about establishing a  
10: collaborative working relationship with  
11: the DEA.  
12: Do you see that?  
13: A. Yes.  
14: Q. And he provided that  
15: testimony to the subcommittee as well,  
16: correct?  
17: A. Yes.  
18: (Document marked for  
19: identification as Exhibit  
20: HDA-Kelly-40.)  
21: BY MR. PIFKO:  
22: Q. I'm handing you what's  
23: marked as Exhibit 40. It's an e-mail  
24: from you to Ann Berkey of McKesson,

00362

01: "It looks like we have some challenges  
02: finding a time that worked for everyone.  
03: Can we possibly do a quick call for  
04: today? If not, I can fill everyone in  
05: via e-mail regarding a discussion the  
06: executive committee had last week on the  
07: topic of drug abuse diversion  
08: specifically with regard to the  
09: Marino/Blackburn legislation."  
10: Do you see that?  
11: A. I do.  
12: Q. Okay. So you sought to  
13: update them with -- with respect to a  
14: discussion the executive committee had on  
15: the Marino/Blackburn legislation,  
16: correct?  
17: A. Yes, yes, that's what this  
18: indicates.  
19: Q. Okay. And then in the  
20: e-mail on the top, Ann, you write to Ann.  
21: She apparently said she was on a plane,  
22: and then you write to her and say, about  
23: halfway down that e-mail, "John sent a  
24: memo, attached."

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00363

01: Do you see that?  
02: A. Yes.  
03: Q. "To executive committee  
04: members on Friday."  
05: Do you see that?  
06: A. I do.  
07: Q. "Regarding next steps on the  
08: Marino/Blackburn legislation."  
09: Do you see that?  
10: A. Yes.  
11: Q. And then you've got the --  
12: the memos attached here to this e-mail?  
13: A. Mm-hmm.  
14: Q. It's entitled, "Status of  
15: HR 4069."  
16: Yes?  
17: A. Yes.  
18: Q. Who put this memo together?  
19: John Gray?  
20: A. It was probably prepared by  
21: the government affairs department.  
22: Q. Okay. Did you have an  
23: involvement in putting this together?  
24: A. I don't know that I'd wrote

00365

01: this legislation would tie the agency's  
02: hand?  
03: MR. WEINSTEIN: Objection to  
04: form. Foundation.  
05: THE WITNESS: Yeah, this  
06: version -- again, this was two  
07: years before the bill was passed,  
08: and it was changed multiple times  
09: afterwards with their input and  
10: feedback.  
11: So initial versions were,  
12: yes, opposed by the agency.  
13: BY MR. PIFKO:  
14: Q. And then it says,  
15: "Essentially, the DEA is categorically  
16: opposed to the provisions in the  
17: legislation to mandate definitions of  
18: imminent danger and consistent with  
19: public health and safety."  
20: Do you see that?  
21: A. I do.  
22: Q. It was your understanding  
23: that DEA was categorically opposed to  
24: those provisions?

p. 00363

p. 00365

00364

01: it. But I probably saw before it was  
02: submitted to the executive committee.  
03: Q. Okay. I want to turn your  
04: attention to the second page of the memo,  
05: third page of Exhibit 40. There's a  
06: heading "DEA."  
07: Do you see that?  
08: A. I do.  
09: Q. "In conversations with  
10: numerous HDMA member companies and select  
11: Hill staff, as well as Al Santos,  
12: recently retired from DEA office of  
13: diversion control, it is our  
14: understanding that DEA is very concerned  
15: with this legislation 'tying the agencies  
16: hands' to actively and aggressively  
17: address diversion and compliance with the  
18: CSA."  
19: Do you see that?  
20: A. I do.  
21: Q. Did I read that correctly?  
22: A. You read it verbatim.  
23: Q. Okay. It was HDA and its  
24: members' understanding that DEA felt that

00366

01: MR. WEINSTEIN: Objection to  
02: form.  
03: THE WITNESS: They were --  
04: at the time they were concerned  
05: that providing any definition of  
06: those terms would somehow require  
07: them to satisfy criteria that they  
08: didn't have to meet at that point  
09: in time.  
10: BY MR. PIFKO:  
11: Q. And then it says, "They were  
12: also categorically opposed to  
13: implementing corrective action plans as  
14: well."  
15: Correct?  
16: A. Yes.  
17: Q. "And they were categorically  
18: opposed to force the agency to  
19: participate in a stakeholder working  
20: group."  
21: Correct?  
22: MR. WEINSTEIN: Objection to  
23: form.  
24: THE WITNESS: That's what it

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00367

01: says, yes.  
02: BY MR. PIFKO:  
03: Q. Was that your understanding  
04: that they were -- they were categorically  
05: opposed to that?  
06: A. Again, I --  
07: MR. WEINSTEIN: Objection to  
08: form.  
09: THE WITNESS: I don't know  
10: what -- what categorically they  
11: were more opposed to than not.  
12: But they were opposed to  
13: essentially most of that --  
14: BY MR. PIFKO:  
15: Q. Those future --  
16: A. -- most of those issues,  
17: yes.  
18: Q. And the last page of the  
19: memo there's some other bullet points.  
20: One of them is -- the top one on the last  
21: page. It says, "DEA is adamantly opposed  
22: to this legislation and has made their  
23: position known to Hill staff as well as  
24: to some industry representatives."

00369

01: final version of that legislation.  
02: MR. WEINSTEIN: We've been  
03: going about an hour.  
04: MR. PIFKO: We'll take a  
05: break in about two seconds.  
06: BY MR. PIFKO:  
07: Q. I want to turn your  
08: attention back to Exhibit 31 to Page 11  
09: and 12. I want to direct you to language  
10: on Page 12, but 11 tells you that this  
11: was a discussion that occurred at the  
12: September 28, 2015, board of directors  
13: meeting. Turn to Page 12. Tell me when  
14: you're ready.  
15: A. Okay.  
16: Q. During this September 28,  
17: 2015, board of directors meeting,  
18: "President Gray noted HDMA executive  
19: committee had discussed and agreed to  
20: prioritize objectives on prescription  
21: drug abuse in the following order: Item  
22: Number 1, exhaust all efforts to secure  
23: passage of S.483."  
24: Do you see that?

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00368

01: Do you see that?  
02: A. Yes.  
03: Q. It was your understanding  
04: that they were adamantly opposed to  
05: legislation at that time?  
06: A. To that version of the bill  
07: in 2014, which is two years before the  
08: final bill was passed, yes.  
09: Q. Did the final bill have the  
10: definition of imminent danger?  
11: A. It did.  
12: Q. Did it have the corrective  
13: action plan?  
14: A. It did.  
15: Q. Did it mandate the DEA to  
16: participate in a stakeholder working  
17: group?  
18: A. It did.  
19: Q. Did it add the "consistent  
20: with public health and safety" language?  
21: A. I don't know if the specific  
22: language was in there. I'm happy to look  
23: at the final version of the bill and tell  
24: you, yes. And DEA did not oppose the

00370

01: A. On -- which page are you on?  
02: Q. 12.  
03: A. Oh, yes. Okay, I see it.  
04: Q. Did I read that correctly?  
05: A. "Exhaust all efforts to  
06: secure passage of S.483." Yes.  
07: Q. So S.483 is the final  
08: version that got passed?  
09: A. It was, yes, the bill that  
10: got passed by the senate and approved  
11: unanimously both -- in both chambers and  
12: signed by President Obama.  
13: MR. PIFKO: Okay. We can  
14: take a break.  
15: THE VIDEOGRAPHER: The time  
16: is 3:51 p.m. We are going off the  
17: record.  
18: (Short break.)  
19: THE VIDEOGRAPHER: The time  
20: is 4:11 p.m. We are back on the  
21: record.  
22: (Document marked for  
23: identification as Exhibit  
24: HDA-Kelly-41.)

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00371

01: BY MR. PIFKO:  
02: Q. I'm handing you what's been  
03: marked Exhibit 41.  
04: For the record it's a series  
05: of e-mails, the recent one dated Monday,  
06: May 1st, 2017, from Matt DiLoreto to Beth  
07: Mitchell. Bates-labeled  
08: HDA\_MDL\_000214979 through 214982.  
09: On the first page of this  
10: document, Beth Mitchell from  
11: AmerisourceBergen writes to Matt DiLoreto  
12: on Monday, May 1st, 2017. She says, "Hi,  
13: Matt. Have you been able to find  
14: anything? Any state bills or approaches  
15: we have ever been able to say yes, we  
16: support this as an effort to address  
17: opioid abuse?"  
18: Do you see that?  
19: A. I do.  
20: Q. Matt writes back, and says,  
21: "Sorry for the delay on this project, but  
22: I was really hoping to find something."  
23: Do you see that?  
24: A. Yes.

00373

01: got the most pressure and allocate  
02: resources there.  
03: But at the federal level and  
04: with the media, we've done a lot of work  
05: with coalitions. We did our practical  
06: solutions suggestions. We worked with  
07: various state organizations, NADDI,  
08: National Association of Boards of  
09: Pharmacy, National Community Pharmacists  
10: Association to support initiatives to  
11: address prescription drug abuse and  
12: diversion with them.  
13: Whether or not we were able  
14: to support a particular bill in a state,  
15: that's going to be probably a little bit  
16: more difficult given the resource  
17: challenges we have. But as far as  
18: activities and publicly supporting opioid  
19: prevention measures, we absolutely have  
20: been very involved, very engaged on that  
21: issue.  
22: Q. Okay. But with respect to  
23: legislation or bills, is it a true  
24: statement that HDA has never publicly

p. 00371

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00372

01: Q. And then at the bottom of  
02: his e-mail there on the first page, he  
03: says, "Bottom line is I talked with both  
04: Patrick and Liz, and they cannot recall  
05: any time that we openly and publicly  
06: supported an opioid abuse prevention  
07: measure."  
08: Do you see that?  
09: A. I do.  
10: Q. Is that a correct statement?  
11: A. That's not a correct  
12: statement.  
13: Q. What opioid abuse prevention  
14: measures has HDA supported?  
15: A. A significant number of  
16: provisions across the -- I mean, at the  
17: state level, it's harder because we're  
18: much more -- we have a smaller group, and  
19: it's difficult to be kind of proactive at  
20: the state level. We have to be more  
21: reactive than not. So allocating  
22: resources at the state level can be a  
23: challenge.  
24: So we tend to go where we've

00374

01: supported an opioid abuse prevention  
02: measure?  
03: MR. WEINSTEIN: Objection to  
04: form.  
05: THE WITNESS: I can't --  
06: again, one doesn't immediately  
07: jump to mind. That's not to say  
08: that there are bills out there  
09: that had passed that just maybe we  
10: didn't even think were opioid  
11: abuse prevention measures. But  
12: I -- I can't -- again, don't --  
13: don't have one that I can  
14: immediately point to.  
15: I can -- you know what, let  
16: me clarify that. There are bills  
17: with regard to suspicious order  
18: monitoring. We've been requested  
19: to have -- support state  
20: regulatory authorities access to  
21: suspicious order monitoring and  
22: ARCOS data, that we're happy to  
23: work with in the State of  
24: Virginia, State of West Virginia,

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00375

01: State of Tennessee, all requested  
02: that we provide opioid  
03: distribution information to them.  
04: We complied and said as long as,  
05: you know, it's duplicative of what  
06: we're sending to DEA, we're happy  
07: to do that.

08: BY MR. PIFKO:

09: Q. When you say opioid  
10: distribution information, what do you  
11: mean?  
12: A. ARCOS data.  
13: Q. Okay.  
14: A. ARCOS data and suspicious  
15: order monitoring reports.  
16: Q. Okay. But that's not any  
17: legislation or bills, correct?  
18: A. It's not.  
19: Q. I'm handing you what's  
20: marked as Exhibit 42.  
21: (Document marked for  
22: identification as Exhibit  
23: HDA-Kelly-42.)  
24: BY MR. PIFKO:

00377

01: MR. WEINSTEIN: Objection to  
02: form. Foundation.  
03: THE WITNESS: I do not. I  
04: can't say for certain. I was not  
05: HDA at the time. But I will take  
06: it at face value that they were  
07: accurate that they were sent out  
08: by Anita.

09: BY MR. PIFKO:

10: Q. You understand that you --  
11: one of your designations here as a  
12: 30(b)(6) witness for -- for HDA is  
13: committee meetings --  
14: A. Yes.  
15: Q. -- concerning opioids and  
16: the substance of those meetings, correct?  
17: MR. WEINSTEIN: Objection to  
18: form.  
19: THE WITNESS: I do, yes.  
20: BY MR. PIFKO:  
21: Q. Okay. And so you don't have  
22: any reason to dispute that these are  
23: accurate notes?  
24: MR. WEINSTEIN: Objection to

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00376

01: Q. It's another e-mails with  
02: agenda and summary of meetings from Anita  
03: Ducca back in 2008. Bates-labeled  
04: CAH\_MDL2804\_01364288 through 300.  
05: This is a lengthy document,  
06: but I just want to ask you about one  
07: provision in here.  
08: A. Is there a specific  
09: provision?  
10: Q. Yeah, I was waiting for you  
11: to tell me you were ready.  
12: A. Okay. I'm ready.  
13: Q. So the -- on the first page  
14: it's an e-mail from Anita Ducca, another  
15: one of her reminders about conference  
16: calls. And she's attaching a summary of  
17: a regulatory affairs meeting that  
18: occurred on July 17, 2008. It's five  
19: pages in.  
20: Do you see that?  
21: A. Yes.  
22: Q. Okay. Do you have any  
23: reason to dispute that these are accurate  
24: notes of the meeting?

00378

01: form.  
02: THE WITNESS: I have no  
03: reason to dispute that these are  
04: accurate notes.  
05: BY MR. PIFKO:  
06: Q. Okay. So I want to direct  
07: your attention to Page 3 of the notes,  
08: which is CAH\_MDL2804\_01364294. Tell me  
09: when you're there.  
10: A. I see it.  
11: Q. Okay. There's a section  
12: here, it says, "Proposed rule on quotas."  
13: Do you see that?  
14: A. Yeah.  
15: Q. Okay. Does DEA participate  
16: in these meetings from time to time?  
17: MR. WEINSTEIN: Objection to  
18: form.  
19: THE WITNESS: Participate in  
20: what meetings?  
21: BY MR. PIFKO:  
22: Q. The regulatory affairs  
23: meetings.  
24: A. They are invited guests in

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00379

01: some instances.  
02: Q. Okay. On the first page of  
03: the notes it says, "Four staff members of  
04: the DEA join the meeting at approximately  
05: 9:15. Mark Caverly explained that since  
06: it was an election year, DEA expected a  
07: slowdown in new initiatives, and the  
08: Office of Management and Budget has told  
09: DEA staff not to submit new major  
10: rulemakings."  
11: Do you see that?  
12: A. No. What page are you?  
13: Q. First page of the notes.  
14: Fifth page of the document. 1364292.  
15: A. Okay.  
16: Q. Do you see that?  
17: A. Four members, yes, okay.  
18: I'm -- I'm with you.  
19: Q. So the four members from DEA  
20: joined the meeting, correct?  
21: A. Correct.  
22: Q. And then the -- the members  
23: of the regulatory affairs committee would  
24: have participated as well, correct?

00381

01: A. Yes.  
02: Q. Okay. So going -- sorry,  
03: going back to the third page of the  
04: notes. 1364294. Let me know when you're  
05: there.  
06: A. I'm there.  
07: Q. It says, "Proposed rule on  
08: quotas for Schedule I and Schedule II  
09: substances. DEA discussed the reduction  
10: in illicit internet purchases and its  
11: impact on decisions on manufacturing  
12: quota sizes. We pointed out the  
13: incongruity of DEA's increases in quota  
14: sizes and the expectation that  
15: distributors will cut back on  
16: distribution."  
17: Do you see that?  
18: A. I do.  
19: Q. Do you have any reason to  
20: dispute that this was discussed at the  
21: meeting?  
22: A. I do not.  
23: Q. So to your knowledge, this  
24: was discussed at the meeting?

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00380

01: A. I believe so, yes.  
02: Q. It says, "The agenda and  
03: list of attendees and guests are  
04: attached"?"  
05: A. Okay.  
06: Q. Do you see that, it says  
07: that on the first page?  
08: A. Yes.  
09: Q. And then we see that HDA  
10: members present, if you go to Page 5 of  
11: the notes, 1364296?  
12: A. I do.  
13: Q. Okay. It's got Steve  
14: Reardon from Cardinal, Mark Hartman from  
15: Cardinal, Gary Hilliard from McKesson,  
16: Steve Mays from AmerisourceBergen.  
17: Do you see that?  
18: A. And Mike Shoneff from  
19: Valley, and Roger Peters, and Brad Pine  
20: and Mike DeBello and Sergio Tejeda.  
21: Q. Okay. And then it's got the  
22: DEA staff that attended as well?  
23: A. Yes.  
24: Q. And HDMA staff, correct?

00382

01: MR. WEINSTEIN: Objection to  
02: form.  
03: THE WITNESS: To my  
04: knowledge it was discussed at the  
05: meeting.  
06: (Document marked for  
07: identification as Exhibit  
08: HDA-Kelly-43.)  
09: BY MR. PIFKO:  
10: Q. I'm handing you what's  
11: marked as Exhibit 43. It is a three-page  
12: document, Bates-labeled HDA\_MDL\_000088099  
13: through 88101.  
14: Take a minute to review this  
15: and let me know when you're done.  
16: A. Okay.  
17: Q. You are part of the e-mail  
18: at the bottom here from John Parker to a  
19: bunch of people including you, do you see  
20: that, dated February 8, 2012?  
21: A. Yes.  
22: Q. It says, "New DEA  
23: talking" -- "TPs," talking points,  
24: correct?

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00383

01: A. Yes.  
02: Q. "Attached are the revised  
03: DEA talking points. I essentially kept  
04: one of Cardinal's three bullets with a  
05: few modifications."  
06: Did I read that correctly?  
07: A. You did.  
08: Q. So HDA worked with members  
09: of the executive committee to draft  
10: talking points concerning the District  
11: Court's TRO against the DEA's suspension  
12: order of Cardinal Health Lakeland  
13: distribution center, correct?  
14: MS. ROLLINS: Objection to  
15: form.  
16: MS. WICHT: Objection.  
17: THE WITNESS: That's what  
18: the first bullet point says, yes.  
19: BY MR. PIFKO:  
20: Q. And the executive committee  
21: worked to draft these; is that correct?  
22: MR. WEINSTEIN: Objection to  
23: form.  
24: THE WITNESS: Again, I don't

00385

01: of --  
02: A. That is my understanding.  
03: Q. -- what happened?  
04: A. Again, I don't recall this  
05: particular document. But I will not  
06: dispute what the e-mail says.  
07: Q. Do you know if  
08: AmerisourceBergen ultimately approved the  
09: talking points?  
10: A. I do not.  
11: Q. What were these talking  
12: points to be used for?  
13: MR. WEINSTEIN: Objection to  
14: form.  
15: THE WITNESS: Again, I don't  
16: know specifically what these were  
17: developed to address. Possibly  
18: media coverage of the case  
19: referenced in the first bullet  
20: point.  
21: BY MR. PIFKO:  
22: Q. In the first bullet point,  
23: it says, "HMDA is pleased that the  
24: District Court granted the TRO against

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00384

01: think the executive committee  
02: drafted them. I think they were  
03: probably shared with the executive  
04: committee. And if they had  
05: comments or provided feedback,  
06: that was incorporated.  
07: BY MR. PIFKO:  
08: Q. Okay. Well, at the top of  
09: this e-mail, John Gray writes to David  
10: Neu from AmerisourceBergen, and says,  
11: "For our 12:30 call, attached is the  
12: latest version based on input from the  
13: rest of the executive committee."  
14: Do you see that?  
15: A. Yes.  
16: Q. So this has had input from  
17: everybody but AmerisourceBergen at this  
18: point, correct?  
19: MR. WEINSTEIN: Objection to  
20: form.  
21: THE WITNESS: That's what it  
22: says, yes.  
23: BY MR. PIFKO:  
24: Q. Is that your understanding

00386

01: the DEA," correct?  
02: A. That's what it says, yes.  
03: Q. And, "It allows Cardinal  
04: Health to resume shipments of controlled  
05: substances," correct? Second bullet  
06: point says that?  
07: A. Yes. That's what it says.  
08: Q. Was this put on HDA's  
09: website?  
10: A. I do not know. It says at  
11: the top, this is for internal use only,  
12: do not distribute. So I would imagine it  
13: did not make it to --  
14: Q. Okay. Maybe some other  
15: version? In your experience would  
16: something like this be put on their -- on  
17: the website?  
18: MR. WEINSTEIN: Objection to  
19: form.  
20: THE WITNESS: Again,  
21: specific talking points wouldn't  
22: be put on the website. It would  
23: be more, you know, kind of  
24: policies, papers or statements or

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00387

01: comments that were submitted.  
02: Talking points are generally  
03: internal documents for purposes of  
04: discussions either on the Hill or  
05: with the media.  
06: BY MR. PIFKO:  
07: Q. Okay. So these could have  
08: been used by your staff in talking to  
09: members of the Hill?  
10: A. They could have been.  
11: MS. ROLLINS: Objection to  
12: form.  
13: BY MR. PIFKO:  
14: Q. To your knowledge were they  
15: used for that?  
16: A. I -- not to my knowledge. I  
17: don't know. I can't say for certain one  
18: way or another.  
19: Q. So sitting here today you  
20: don't have any recollection of how these  
21: were used?  
22: A. Again, it's 2012. I don't  
23: recall.  
24: Q. I'll have you look back at

00389

01: part of the entry, it says, "EC" --  
02: that's executive committee, correct?  
03: A. That's correct.  
04: Q. -- "asked OFW" -- that's  
05: Olsson Frank, the outside counsel,  
06: correct?  
07: A. Correct.  
08: Q. -- "to prepare a draft  
09: amicus brief in the Cardinal case."  
10: Correct?  
11: A. Correct.  
12: Q. So it's your understanding  
13: that the executive committee asked HDA's  
14: outside counsel to prepare an amicus  
15: brief for the Cardinal case in  
16: February 2012, correct?  
17: A. That's correct.  
18: Q. I'm handing you what's  
19: marked Exhibit 44.  
20: (Document marked for  
21: identification as Exhibit  
22: HDA-Kelly-44.)  
23: BY MR. PIFKO:  
24: Q. For the record it's an

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00388

01: Exhibit 31. It looks like this.  
02: A. Yes.  
03: Q. The first entry on February  
04: 16, 2012 --  
05: (Brief interruption.)  
06: THE VIDEOGRAPHER: Off the  
07: record. 4:29 p.m.  
08: (Brief pause.)  
09: THE VIDEOGRAPHER: The time  
10: is 4:33 p.m. We are back on the  
11: record.  
12: BY MR. PIFKO:  
13: Q. All right. So we're looking  
14: at Exhibit 31 at the first entry dated  
15: February 16, 2012.  
16: Do you see that?  
17: A. Yes.  
18: Q. So this is a summary of the  
19: portions of the executive committee,  
20: correct?  
21: A. Yes.  
22: Q. Of the executive committee  
23: meeting. And so it says that HDMA met  
24: with DEA staff. And then at the second

00390

01: e-mail from John Gray. At the top  
02: there's some other e-mails. The top  
03: e-mail is dated Thursday, February 23rd,  
04: 2012. And the subject is, "Draft Amicus  
05: Brief, Cardinal Health v. Holder."  
06: It's Bates-labeled  
07: HDA\_MDL\_000215212 through 215233.  
08: Take a minute to review that  
09: and let me know when you're done.  
10: A. Okay.  
11: Q. So at the bottom of this  
12: e-mail, David Durkin is e-mailing to  
13: Richard Frank a revised draft of the  
14: brief, agree?  
15: A. Yes.  
16: Q. Then, Richard Frank forwards  
17: it. Richard Frank is an attorney at  
18: Olsson Frank, correct?  
19: A. Correct.  
20: Q. Outside counsel for HDA,  
21: correct?  
22: A. Correct.  
23: Q. Okay. He forwards the draft  
24: amicus brief to John Gray and you and

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00391

01: others in HDA, correct?  
02: A. Correct.  
03: Q. And he writes, "HDMA  
04: colleagues, attached is the draft amicus  
05: brief for your consideration. The  
06: executive committee asked that this be  
07: sent to them for approval or objection  
08: prior to filing. We should also run it  
09: by Cardinal's counsel."  
10: Did I read that correctly?  
11: A. You did.  
12: Q. Okay. Do you recall  
13: receiving that e-mail?  
14: A. I'm obviously here on the  
15: addressees. Yes.  
16: Q. Okay. And then at the top  
17: of this e-mail here, John Gray forwards  
18: it to David Moody, and David Neu from  
19: AmerisourceBergen correct?  
20: A. Correct. David Moody was  
21: North Carolina Mutual and the chairman of  
22: the organization.  
23: Q. Okay. Is it your  
24: understanding that John Gray also

00393

01: MR. WEINSTEIN: Objection to  
02: form.  
03: THE WITNESS: I do not  
04: recall specific concerns about the  
05: aggressive Section 3.  
06: BY MR. PIFKO:  
07: Q. John Gray never shared that  
08: information with you?  
09: MR. WEINSTEIN: Objection to  
10: form.  
11: THE WITNESS: Again, I don't  
12: recall. They may have shared that  
13: information, there may have been  
14: discussion about it. I just don't  
15: recall.  
16: BY MR. PIFKO:  
17: Q. I'm handing you what's been  
18: marked Exhibit 45.  
19: (Document marked for  
20: identification as Exhibit  
21: HDA-Kelly-45.)  
22: BY MR. PIFKO:  
23: Q. Series of e-mails concerning  
24: the same subject to Cardinal v. Holder

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00392

01: forwarded the draft to the other members  
02: of the executive committee as well?  
03: MR. WEINSTEIN: Objection to  
04: form. Foundation.  
05: THE WITNESS: Again, I would  
06: deduce that based on the executive  
07: committee request. But this is  
08: sent to the chairman and vice  
09: chairman.  
10: BY MR. PIFKO:  
11: Q. So he sends it to them and  
12: says, "Attached is a draft amicus brief  
13: that HDMA could file on behalf of our  
14: membership in support of the Cardinal  
15: case next week. I think it's an  
16: excellent recitation of our issues with  
17: DEA. However, I fear it may be too  
18: aggressive in Section 3 at this point in  
19: time."  
20: Do you see that?  
21: A. Yes, I can read that.  
22: Q. Do you recall any  
23: discussions about what specifically was  
24: too aggressive in Section 3?

00394

01: amicus brief. It's Bates-labeled  
02: HDA\_MDL\_000215970 through 215973.  
03: Take a moment to review this  
04: and let me know when you're done.  
05: A. Okay.  
06: Q. You ready?  
07: So on the last page of this  
08: document, which is the earliest of the  
09: e-mail thread, David Durkin, he's outside  
10: counsel for HDA, correct?  
11: A. Correct.  
12: Q. He is the one who authored  
13: the amicus brief for the Cardinal v.  
14: Holder case, correct?  
15: A. Correct.  
16: Q. He's writing to Doug  
17: Farquhar -- am I saying that right?  
18: A. Yes.  
19: Q. Doug -- do you know who Doug  
20: Farquhar is?  
21: A. I believe he is an attorney  
22: at Hyman Phelps.  
23: Q. Okay. And he was outside  
24: counsel for Cardinal Health in the

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00395

01: underlying litigation, correct?  
02: A. I -- I think so, yes. I  
03: can't recall specifically.  
04: Q. So David Durkin is asking  
05: him for thoughts on how to handle the  
06: judge in that case on the first page.  
07: Do you see that?  
08: MR. WEINSTEIN: Objection to  
09: form.  
10: MS. WICHT: Objection to  
11: form.  
12: BY MR. PIFKO:  
13: Q. Do you agree with that?  
14: MR. WEINSTEIN: Objection to  
15: form.  
16: THE WITNESS: I agree that  
17: there is a question to Doug about  
18: the handling of the case, yes.  
19: BY MR. PIFKO:  
20: Q. And handling of how the  
21: judge is handling the matter?  
22: A. Yes.  
23: Q. And anything he -- he's  
24: asking anything you want me to be aware

00397

01: A. I agree.  
02: Q. Linden Barber was inhouse  
03: counsel for Cardinal Health at this  
04: point?  
05: MS. WICHT: Objection to  
06: form. Foundation.  
07: THE WITNESS: I think Linden  
08: at this time was with Quarles &  
09: Brady.  
10: BY MR. PIFKO:  
11: Q. He was outside counsel for  
12: Cardinal at this point, correct -- is  
13: that correct?  
14: A. Again, I don't know what his  
15: specific role, or relationship was. But  
16: I think he was, yes, at one point in  
17: time. I don't know when that -- when  
18: that engagement began.  
19: Q. Okay. And then you were  
20: aware that Cardinal's outside counsel had  
21: provided comments on this brief, because  
22: then David Durkin forwards this to you  
23: with the subject Cardinal's counsel's  
24: comments on amicus brief on Monday,

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00396

01: of with regard to how Judge Walton is  
02: handling this matter?  
03: A. That's what it says, yes.  
04: Q. Okay. And Doug Farquhar  
05: writes back. And then there is some  
06: subsequent discussions.  
07: And then on February 24,  
08: 2012, Doug writes to David Durkin copying  
09: Linden Barber.  
10: Do you see that?  
11: A. Yes.  
12: Q. Starts on the first page of  
13: the document?  
14: A. Yes, yes, yes, yes.  
15: Q. And he says, "David, Linden  
16: Barber and I have reviewed the amicus  
17: brief and think it's really quite good.  
18: Cardinal Health does, in fact, authorize  
19: you to represent that we consent to your  
20: motion for leave to file. We make the  
21: following suggestions," and then there's  
22: a page of suggestions, and then it goes  
23: on to the next page with the suggestions.  
24: Agree?

00398

01: February 27, 2012, correct?  
02: A. Yes.  
03: Q. And we -- you know, but I  
04: don't know what's there, because it's  
05: redacted, correct?  
06: A. I don't recall either, but I  
07: see that my name was on the e-mail.  
08: (Document marked for  
09: identification as Exhibit  
10: HDA-Kelly-46.)  
11: BY MR. PIFKO:  
12: Q. I'm handing you what's  
13: marked as Exhibit 46. For the record,  
14: it's a three-page document Bates-labeled  
15: HDA\_MDL\_000216300 through 216302.  
16: The subject is the HDMA  
17: amicus brief, Cardinal v. Holder, DC  
18: Circuit. The most recent e-mail is dated  
19: March 5, 2012.  
20: A. Okay.  
21: Q. The HDA couldn't have filed  
22: this brief unless they got approval from  
23: all the members of the executive  
24: committee, correct?

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00399

01: MR. WEINSTEIN: Objection to  
02: form.  
03: THE WITNESS: That's usually  
04: the process. They try to get  
05: consensus approval, yes.  
06: BY MR. PIFKO:  
07: Q. That's the process here as  
08: well?  
09: A. I believe so, yes.  
10: Q. John Gray writes to the  
11: members of the executive committee on  
12: March 4, 2012. Do you see that, on the  
13: bottom of the first page?  
14: A. Yes.  
15: Q. I have it right that he's  
16: writing to the members of the executive  
17: committee?  
18: A. At the time, yes.  
19: Q. Okay. And he's -- and that  
20: includes AmerisourceBergen, McKesson, and  
21: Cardinal Health, correct?  
22: A. And HD Smith and Dakota Drug  
23: and Smith Drug and North Carolina Mutual.  
24: Q. Okay. And he says, "I

00401

01: MS. CHARLES: Form.  
02: THE WITNESS: If it's stated  
03: here that they were given an  
04: opportunity to review the brief,  
05: yes.  
06: BY MR. PIFKO:  
07: Q. And John Gray further  
08: states, "I agree with HDMA counsel that  
09: this is the best time to file such a  
10: brief, to let the appellate court  
11: understand the extent of our industry's  
12: concerns and frustrations in trying to  
13: work with the DEA on suspicious order  
14: monitoring."  
15: Did I read that correctly?  
16: A. Suspicious ordering  
17: monitoring. But, yes.  
18: Q. "This may be the last chance  
19: to address these issues before an  
20: appellate bench in this matter. A  
21: favorable decision will establish a  
22: useful judicial precedent for all HDMA  
23: members to rely upon if necessary."  
24: Do you see that?

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p. 00401

00400

01: apologize for" -- "apologize for  
02: interrupting your weekend. HDMA outside  
03: counsel was informed today that the U.S.  
04: Court of Appeals in Washington agreed  
05: late Friday to stay the district court's  
06: ruling last Wednesday lifting the TRO on  
07: the DEA's immediate suspension order  
08: against Cardinal Health.  
09: "As such, HDMA counsel is  
10: recommending that HDMA now file the  
11: amicus brief prepared after our recent  
12: executive committee to set forth HDMA's  
13: overall industry concern."  
14: Do you see that?  
15: A. I do.  
16: Q. Okay. Do I have that  
17: correct?  
18: A. Yes.  
19: Q. "This draft brief was  
20: reviewed by most of you early last week."  
21: Do you agree that the  
22: members of the executive committee were  
23: given the opportunity to review the  
24: brief?

00402

01: A. Yes.  
02: Q. Did you have an  
03: understanding about what the significance  
04: of the rulings were in this case?  
05: MR. WEINSTEIN: Objection to  
06: form.  
07: THE WITNESS: I understood  
08: the process that kind of launched  
09: the -- the need for filing of the  
10: amicus, yes.  
11: BY MR. PIFKO:  
12: Q. And what -- what was that?  
13: A. Just the process that DEA  
14: utilized to issue their suspension order,  
15: was what I think we -- we were concerned  
16: was vague and, you know, I think  
17: illustrated the concerns that the -- the  
18: entire industry had with the lack of  
19: clarity that the industry had with regard  
20: to DEA expectations and their enforcement  
21: authorities.  
22: Q. Do you know what the outcome  
23: of the matter was?  
24: MR. WEINSTEIN: Objection to

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00403

01: scope.  
02: THE WITNESS: In the  
03: Cardinal v. Holder case?  
04: BY MR. PIFKO:  
05: Q. Yeah.  
06: A. I don't recall initially.  
07: Q. Are you aware that Cardinal  
08: Health eventually admitted wrongdoing?  
09: MS. WICHT: Objection to  
10: form.  
11: MR. WEINSTEIN: Objection to  
12: scope.  
13: THE WITNESS: Again, I --  
14: there was resolution of the case.  
15: I don't know what the exact  
16: details of the resolution were.  
17: BY MR. PIFKO:  
18: Q. Did anyone tell you that  
19: Cardinal Health had admitted wrongdoing?  
20: A. I think --  
21: MR. WEINSTEIN: Objection to  
22: scope.  
23: MS. WICHT: Objection to  
24: form.

00405

01: Masters Pharmaceutical case with the  
02: executive committee, correct?  
03: A. Yes.  
04: Q. And it's drafted by HDA's  
05: inhouse counsel, Ms. Gallenagh?  
06: MR. WEINSTEIN: Objection to  
07: form. Foundation.  
08: THE WITNESS: Yeah, I don't  
09: know if this was done by inhouse  
10: counsel or outside OFW.  
11: BY MR. PIFKO:  
12: Q. Well, it's -- it says --  
13: it's got her name on it here. Do I have  
14: that correct?  
15: A. Her name's on the e-mail.  
16: Q. Well, but it says from John  
17: Gray and Ms. Gallenagh.  
18: A. Right.  
19: Q. Do you see that?  
20: A. Right, but I don't know who  
21: drafted the -- the -- this document. I  
22: don't know if that was done by inhouse or  
23: outside counsel.  
24: Q. Ms. Gallenagh is the same

p. 00403

p. 00405

00404

01: THE WITNESS: Again, I think  
02: at the time I probably was aware  
03: that that was the resolution of  
04: the case.  
05: BY MR. PIFKO:  
06: Q. Okay.  
07: (Document marked for  
08: identification as Exhibit  
09: HDA-Kelly-47.)  
10: BY MR. PIFKO:  
11: Q. I'm handing you what's  
12: marked as Exhibit 47.  
13: For the record, Exhibit 47  
14: is an e-mail from John Gray dated  
15: November 19th, 2015. The subject is  
16: "Masters suit, draft amicus outline - for  
17: your consideration." It's Bates-labeled  
18: HDA\_MDL\_000219211 through 219213.  
19: Take a moment to review it.  
20: And let me know when you're done.  
21: A. Okay.  
22: Q. In Exhibit 47, John Gray is  
23: sharing an outline of a draft amicus  
24: brief or a draft amicus outline for the

00406

01: counsel that's here today at the  
02: deposition?  
03: A. That's correct.  
04: Q. So this outline and summary  
05: memo was provided to HDA's executive  
06: committee -- committee members on  
07: November 19, 2015, correct?  
08: A. Yes.  
09: Q. There was a request that  
10: people consider this and provide input on  
11: whether to pursue it, correct?  
12: A. That's correct.  
13: (Document marked for  
14: identification as Exhibit  
15: HDA-Kelly-48.)  
16: BY MR. PIFKO:  
17: Q. I'm handing you what's  
18: marked as Exhibit 48. Take a minute to  
19: review Exhibit 48. For the record,  
20: Exhibit 48 is a two-page document  
21: Bates-labeled HDA\_MDL\_000215966 through  
22: 67.  
23: It's dated from  
24: January 2016, and the subject is "Action

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00407

01: requested - HDMA Masters amicus brief."  
02: Let me know when you're  
03: ready.  
04: A. Okay.  
05: Q. So in this document,  
06: Exhibit 48, John Gray is again e-mailing  
07: the executive committee and asking for  
08: their approval to move forward with the  
09: drafting of the amicus brief in the  
10: Masters case, correct?  
11: A. That's correct.  
12: Q. And he notes that they're  
13: going to hire someone from Latham &  
14: Watkins, and they estimate the cost is  
15: going to be about \$150,000, correct?  
16: A. Yes. That's what this  
17: states.  
18: Q. Okay. And he says that he  
19: recommends the executive committee  
20: approve based on the following and  
21: provides five bullet points describing  
22: why Mr. Gray believes that the members  
23: should approve the proceeding with  
24: drafting and ultimately filing the brief,

00409

01: Q. I'm handing you what's  
02: marked as Exhibit 49. Exhibit 49 is a  
03: document Bates-labeled HDA\_MDL\_000162206  
04: through 162256. It's an e-mail from you  
05: dated April 5, 2016, to Ruth Miller.  
06: Subject is "Amicus brief filed in Masters  
07: case." It attaches the brief and a  
08: consent motion. Let me know when you're  
09: done.  
10: A. I agree that's what it  
11: includes.  
12: Q. Okay. That's -- so you say  
13: here on the first -- well, first -- this  
14: is the final version of the brief that  
15: was filed, correct?  
16: A. To the best of my knowledge,  
17: yes.  
18: Q. And you're sharing this with  
19: Ruth Miller?  
20: A. Yes.  
21: Q. Who is that?  
22: A. Ruth Miller at the time was  
23: in our regulatory affairs department. I  
24: believe she was a senior director.

p. 00407

p. 00409

00408

01: correct?  
02: A. Yes.  
03: Q. And we see here on top of  
04: the e-mail that AmerisourceBergen  
05: approved that course of action, correct?  
06: A. Yes.  
07: Q. Do you know if the other  
08: members approved the filing of the brief?  
09: MR. WEINSTEIN: Objection to  
10: form.  
11: THE WITNESS: I don't know.  
12: I know -- I think that the brief  
13: was filed, so I'd imagine that  
14: they did approve the filing of the  
15: brief.  
16: BY MR. PIFKO:  
17: Q. Again, because they wouldn't  
18: file a brief without approval of the  
19: executive committee members, correct?  
20: A. That's correct.  
21: (Document marked for  
22: identification as Exhibit  
23: HDA-Kelly-49.)  
24: BY MR. PIFKO:

00410

01: Q. And what was her role in the  
02: regulatory affairs department?  
03: A. Her role was primarily in  
04: the DEA-related regulatory affairs  
05: issues.  
06: Q. What specifically does she  
07: do?  
08: A. She would basically review  
09: various regulatory documents and  
10: interactions with the DEA.  
11: Q. For what purpose?  
12: MR. WEINSTEIN: Objection to  
13: form.  
14: THE WITNESS: To represent  
15: HDA's interest in front of the  
16: agency.  
17: BY MR. PIFKO:  
18: Q. You say here, "Long story  
19: short, our members felt it was an  
20: important opportunity to weigh in as  
21: dispassionately as possible with the  
22: Court on some of the ambiguities that  
23: Masters referenced in their pleadings as  
24: well as some of the points that the

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p. 00410

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00411

01: administrative law judge addressed in her  
02: recommendations to overturn the  
03: suspension order."  
04: Do you see that?  
05: A. I do.  
06: Q. Were you part of discussions  
07: with the members about this brief?  
08: MR. WEINSTEIN: Objection to  
09: form.  
10: THE WITNESS: Not the  
11: details of the brief itself. That  
12: was handled by Latham & Watkins.  
13: But I was aware that the brief was  
14: being crafted and was going to be  
15: submitted.  
16: BY MR. PIFKO:  
17: Q. And the members shared their  
18: views on the strategy with you, such that  
19: you could provide it here to Ms. Miller?  
20: MR. WEINSTEIN: Objection to  
21: form. Foundation. Scope.  
22: THE WITNESS: The members of  
23: this instance would have probably  
24: been involved to the legal

00413

01: amicus brief that was filed in the West  
02: Virginia Supreme Court of Appeals. It's  
03: Bates-labeled HDA\_MDL\_000212579 through  
04: 212616.  
05: A. Okay.  
06: Q. Are you aware that HDMA  
07: filed an amicus brief in the West  
08: Virginia State Court litigation against  
09: the distributors?  
10: A. I am.  
11: Q. And did the executive  
12: committee authorize the filing of that  
13: brief?  
14: A. I would think that they  
15: would have, yes.  
16: Q. Do you have any reason to  
17: believe that they wouldn't have supported  
18: it?  
19: A. No.  
20: MS. WICHT: Objection to  
21: form.  
22: BY MR. PIFKO:  
23: Q. I'm going to turn your  
24: attention back to Exhibit 1, the subpoena

p. 00411

p. 00413

00412

01: committee, HDA's legal committee  
02: and handled there. So I think  
03: they probably did provide feedback  
04: to the strategy as it was moving  
05: forward.  
06: BY MR. PIFKO:  
07: Q. What's your understanding of  
08: what the ambiguities were that Masters  
09: referenced in their pleadings?  
10: MR. WEINSTEIN: Objection to  
11: form. Scope. Foundation. And  
12: calls for a legal conclusion.  
13: THE WITNESS: Again, I think  
14: some of the ambiguities had to do  
15: with the authority that DEA  
16: referenced in their action against  
17: Masters.  
18: (Document marked for  
19: identification as Exhibit  
20: HDA-Kelly-50.)  
21: BY MR. PIFKO:  
22: Q. I'm handing you what's  
23: marked Exhibit 50. For the record,  
24: Exhibit 50 is an e-mail attaching another

00414

01: with the topics. Are you there?  
02: A. I am.  
03: Q. Okay. Topic Number 3 is  
04: your lobbying activities related to the  
05: manufacture, marketing, advertising and  
06: distribution of opioids or opioid  
07: products.  
08: Do you see that?  
09: A. I do.  
10: Q. Do you understand yourself  
11: to be -- have been designated to talk  
12: about that topic here today?  
13: A. I do.  
14: Q. We talked about Topic 4  
15: already.  
16: Topic Number 5: Your  
17: advocacy or legal support for any  
18: defendant, including but not limited to,  
19: amicus curiae briefs or any -- or other  
20: legal documents prepared by you in  
21: support of any defendant.  
22: Do you see that?  
23: A. I do.  
24: Q. Do you understand yourself

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p. 00414

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00415

01: to be designated to talk on that topic  
02: today?  
03: A. I do.  
04: Q. Topic Number 6: The nature,  
05: scope and identity of any conferences,  
06: seminars or webinars you have sponsored,  
07: promoted or organized where the duty to  
08: prevent diversion and identify and report  
09: suspicious orders was included among the  
10: topics of discussion.  
11: Do you see that?  
12: A. I do.  
13: Q. Do you understand yourself  
14: to be designated to talk on that topic  
15: today?  
16: A. I do.  
17: Q. Topic Number 7:  
18: Communications with the DEA or any state  
19: or federal government agency regarding  
20: the diversion or suspicious orders of  
21: opioids or opioid products, including but  
22: not limited to, the attendance,  
23: participation in, presentations given by  
24: the DEA at your conferences, seminars, or

00417

01: A. I do.  
02: Q. Do you understand yourself  
03: to be designated to talk on that topic  
04: today?  
05: A. I do.  
06: Q. Topic Number 13: The scope  
07: and nature of any discussions of any  
08: council, committee, task force, or  
09: working group of the HDA concerning  
10: diversion of controlled substances.  
11: Do you see that?  
12: A. I do.  
13: Q. Do you understand yourself  
14: to be designated to talk on that topic  
15: today?  
16: A. I do.  
17: Q. What did you do to prepare  
18: to testify on those topics?  
19: A. I met with counsel several  
20: days in the last couple days and then  
21: previously when we thought this was going  
22: to be scheduled earlier, or later in  
23: 2018. So probably four or five meetings  
24: with counsel and staff.

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p. 00417

00416

01: webinars regarding advice, direction,  
02: guidance or instruction regarding the  
03: duty to prevent diversion and identify  
04: and report suspicious orders.  
05: Do you understand yourself  
06: to be designated to talk on that topic  
07: today?  
08: A. I do.  
09: Q. Topic Number 8: Any  
10: communications efforts, activities,  
11: initiatives or work performed by you  
12: regarding quotas set by the DEA,  
13: including increases to or maintenance of  
14: the quotas.  
15: Do you understand yourself  
16: to be designated to talk on that topic  
17: today?  
18: A. Yes.  
19: Q. The scope -- Topic  
20: Number 12: The scope and nature of any  
21: discussions of any council, committee,  
22: task force or working group of the HDA  
23: concerning opioids.  
24: Do you see that?

00418

01: Q. Okay. I was going to ask  
02: you. Besides counsel, did you meet with  
03: any staff members?  
04: A. I did. I met with Anita  
05: Ducca primarily to understand the period  
06: of time I was not at HDA.  
07: Q. And did she provide any  
08: documents to you?  
09: A. Other than the documents  
10: that were produced.  
11: Q. So she provided documents to  
12: you that were produced?  
13: MR. WEINSTEIN: Objection to  
14: form.  
15: THE WITNESS: No. Counsel  
16: provided the documents.  
17: BY MR. PIFKO:  
18: Q. Okay. So when you  
19: understood you were going to be  
20: designated to come speak for the HDA at  
21: this deposition, counsel provided you  
22: with documents that had been produced in  
23: the litigation?  
24: A. That's correct.

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00419

01: Q. Okay. And when you met with  
02: Ms. Ducca, did we go over any of those  
03: documents?  
04: A. We did.  
05: Q. Okay. Did you review the  
06: documents on your own time without  
07: anybody?  
08: A. I did not.  
09: Q. Okay. Who else besides  
10: Ms. Ducca from the staff did you meet  
11: with?  
12: A. Our general counsel  
13: participated in the meetings as well.  
14: Q. Okay. Anyone else?  
15: A. No.  
16: Q. About how many hours did you  
17: meet with Ms. Ducca?  
18: A. Over the course, probably  
19: eight -- between eight and ten hours.  
20: Q. And you felt, based on those  
21: discussions and the review of documents,  
22: that you had adequate understanding to  
23: testify on those topics I just read to  
24: you?

00421

01: A. 11?  
02: Q. Yeah.  
03: A. Document 11?  
04: Q. Okay. You ready?  
05: A. Yes.  
06: Q. So you recall, when I showed  
07: you Document 11 and I asked you if you  
08: had an understanding about the date of  
09: when the National Wholesale Druggists'  
10: Association suspicious order monitoring  
11: system, which is Exhibit 11, what the  
12: date of that document was, do you recall  
13: that discussion?  
14: A. I recall that discussion,  
15: yes.  
16: Q. Okay. Well, Exhibit 51 is a  
17: series of letters from the DEA concerning  
18: the National Wholesale Druggists'  
19: Association's suspicious order monitoring  
20: system. And if you see, the first page  
21: of Exhibit 51 is stamped April 27, 1984.  
22: Do you see that?  
23: A. I do.  
24: Q. Does that refresh your

p. 00419

p. 00421

00420

01: A. I do.  
02: MR. PIFKO: Okay. We'll  
03: take a break.  
04: THE VIDEOGRAPHER: The time  
05: is 5:09 p.m. We are off the  
06: record.  
07: (Short break.)  
08: THE VIDEOGRAPHER: The time  
09: is 5:25 p.m. We are back on the  
10: record.  
11: (Document marked for  
12: identification as Exhibit  
13: HDA-Kelly-51.)  
14: BY MR. PIFKO:  
15: Q. Handing you what's marked as  
16: Exhibit 51.  
17: And while you are looking --  
18: go ahead and take your time to look at  
19: that, but then I also want you to pull  
20: out Exhibit 11 which goes with  
21: Exhibit 51.  
22: For the record, Exhibit 51  
23: is a three-page document Bates-labeled  
24: CAH\_MDL2804\_02201918 through 1920.

00422

01: recollection that Exhibit 11 is from  
02: approximately in the early '80s?  
03: MR. WEINSTEIN: Objection to  
04: form, foundation, scope.  
05: THE WITNESS: I will --  
06: again, I have not seen either of  
07: these documents. I will take it  
08: at face value that that was when  
09: this document was prepared.  
10: BY MR. PIFKO:  
11: Q. Okay. Well, Exhibit 51 is a  
12: letter from Thomas Gitchel, acting chief  
13: diversion operations section of the DEA,  
14: correct?  
15: A. Yes.  
16: Q. And it's dated April 27,  
17: 1984, correct?  
18: A. Yes.  
19: Q. And it's to Ronald J.  
20: Streck, vice president of government  
21: affairs, National Wholesale Druggists'  
22: Association.  
23: That's a predecessor entity  
24: of HDA, correct?

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00423

01: A. That's correct.  
02: Q. Do you know who Mr. Streck  
03: is?  
04: A. Mr. Streck became at one  
05: point the CEO of the NWDA.  
06: Q. Okay. Do you know around  
07: the time that was?  
08: A. I do not know when he --  
09: Mr. Gray did succeed him as the CEO.  
10: Q. Okay. Mr. Gray was  
11: immediately after him?  
12: A. Immediately after him, yes.  
13: Q. Okay. So this document  
14: says, the second full paragraph, "The  
15: NWDA's draft format for suspicious order  
16: monitoring system provides an excellent  
17: framework for distributor" --  
18: "distributor registrants to design and  
19: operate a system to disclose to  
20: registrants suspicious orders of  
21: controlled substances."  
22: Do you see that?  
23: A. I do.  
24: Q. And it says, "Draft format

00425

01: form. Foundation. Scope.  
02: THE WITNESS: No reason to  
03: dispute that they received a pen  
04: and ink draft marked-up version.  
05: BY MR. PIFKO:  
06: Q. And this letter from DEA,  
07: correct?  
08: MR. WEINSTEIN: Same  
09: objections.  
10: THE WITNESS: No reason to  
11: dispute that.  
12: BY MR. PIFKO:  
13: Q. Based on your understanding  
14: of the HDA and as a designee under Rule  
15: 30(b)(6), do you believe this would have  
16: been provided to HDA's members?  
17: MR. WEINSTEIN: Objection to  
18: form, foundation, and scope.  
19: THE WITNESS: Again, I don't  
20: know what capabilities were back  
21: in 1984. I would imagine it was  
22: reported at some point to HDA  
23: members.  
24: BY MR. PIFKO:

p. 00423

p. 00425

00424

01: for a suspicious order monitoring  
02: system." And Exhibit 11 says,  
03: "Suspicious order monitoring system,"  
04: correct?  
05: A. It does.  
06: Q. Okay. Then on the bottom of  
07: that same paragraph, Mr. Gitchel says in  
08: the letter to Mr. Streck, "As previously  
09: discussed, an after-the-fact computer  
10: printout of sales data does not relieve a  
11: registrant of its responsibility to  
12: report excessive or suspicious orders  
13: when discovered."  
14: Do you see that?  
15: A. I do.  
16: Q. And then he says, "I'm  
17: enclosing a copy of your draft with my  
18: pen and ink changes."  
19: Do you see that?  
20: A. I do.  
21: Q. Do you agree -- any reason  
22: to dispute that the NWDA received this  
23: document?  
24: MR. WEINSTEIN: Objection to

00426

01: Q. Okay. In the first  
02: paragraph --  
03: A. Or NWDA members.  
04: Q. In the first paragraph he  
05: says, "I want to thank" -- "I want to  
06: take this opportunity to thank you,  
07: Mr. Streck, and then Mr. David Prins,  
08: from Twin City Wholesale, and Mr. Robert  
09: Bone from Bergen Brunswig for meeting  
10: with David Walkup and me on April 13,  
11: 1984."  
12: Do you see that?  
13: A. I do.  
14: Q. So based on this, it appears  
15: some of the members in addition to  
16: Mr. Streck met with the DEA about the  
17: suspicious order monitoring system,  
18: correct?  
19: A. It would appear so, yes.  
20: Q. Then the third page of  
21: Exhibit 51 is another letter to  
22: Mr. Streck from Thomas Gitchel.  
23: Do you see that?  
24: A. I do.

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p. 00426

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00427

01: Q. And it appears to be dated  
02: May 16, 1984.  
03: Do you see that?  
04: A. I do.  
05: Q. In the letter from  
06: Mr. Gitchel, he says at the bottom of the  
07: first full paragraph, "However, I want to  
08: make it clear that the submission of  
09: monthly printout of after-the-fact sales  
10: will not relieve a registrant from the  
11: responsibility of reporting excessive or  
12: suspicious orders. DEA has interpreted  
13: orders to mean prior to shipment."  
14: Do you see that?  
15: A. I do.  
16: Q. And that's consistent with  
17: the language that we discussed on Page  
18: seven of Exhibit 11 where it says, "DEA  
19: has interpreted orders to mean prior to  
20: shipment."  
21: Do you see that?  
22: A. I do.  
23: Q. Do you agree that it's --  
24: this DEA letter from 1984 is consistent

00429

01: THE WITNESS: Most -- yes,  
02: as most trade associations do, on  
03: behalf of their members.  
04: MR. PIFKO: Okay. We're  
05: going to hold the deposition of  
06: HDA open, given some of the  
07: prior -- the deposition of Mr. Fri  
08: and some issues we can meet and  
09: confer about. We don't have to  
10: waste everyone's time.  
11: I'm going to turn it over to  
12: the Tennessee counsel.  
13: MR. WEINSTEIN: We can speak  
14: outside. I had no notice, and I  
15: do not agree that Tennessee can  
16: ask questions. Not after seven  
17: hours.  
18: MR. STEWART: It's properly  
19: noticed.  
20: MR. WEINSTEIN: It was not  
21: noticed to me. I'm not having my  
22: witness testify after seven hours.  
23: THE VIDEOGRAPHER: So we're  
24: going to go off the record

p. 00427

p. 00429

00428

01: with that language in the NWDA's  
02: suspicious order monitoring system?  
03: MR. WEINSTEIN: Objection to  
04: form, foundation, and scope.  
05: THE WITNESS: It appears to  
06: be the same statement, yes.  
07: BY MR. PIFKO:  
08: Q. Do you believe that this May  
09: 16th, 1984 letter would have been shared  
10: with the NWDA's members?  
11: MR. WEINSTEIN: Objection to  
12: form, foundation, and scope.  
13: THE WITNESS: Again, I can't  
14: say for certain. I would imagine  
15: that it was. As correspondence  
16: like this would technically be  
17: shared with the membership.  
18: BY MR. PIFKO:  
19: Q. And again, because HDA and  
20: its predecessor entities would act on  
21: behalf of the members, not for its own  
22: interest, correct?  
23: MR. WEINSTEIN: Objection to  
24: form, foundation, and scope.

00430

01: obviously. The time is 5:34 p.m.  
02: We're going off the record.  
03: (Short break.)  
04: THE VIDEOGRAPHER: The time  
05: is 5:35 p.m. We're back on the  
06: record.  
07: MR. STEWART: I'll let you  
08: speak.  
09: My understanding is that  
10: after we've been sitting here for  
11: hours and hours, and obviously the  
12: expectation was that, as with the  
13: deposition earlier in the week,  
14: that we would take our two hours  
15: of testimony. I'm being told that  
16: you are not going to permit the  
17: witness to testify today; is that  
18: correct?  
19: MR. WEINSTEIN: That's  
20: correct, Mike. So let me explain.  
21: On Tuesday in the deposition  
22: of Mr. Fri, you approached me,  
23: identified who you were. That was  
24: the first that I had ever heard of

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00431

01: anything relating to Tennessee. I  
02: had not received any notice of a  
03: deposition with respect to  
04: Mr. Fri.  
05: You then e-mailed it to me  
06: on the spot. I said that's --  
07: this is the first I'm hearing of  
08: it. You said, well, we'd like to  
09: ask Mr. Fri an hour's worth of  
10: questions, and if you'll agree to  
11: that, then in exchange we'll agree  
12: not to try to depose him in the  
13: Tennessee matter.  
14: The plaintiffs' deposition  
15: of Mr. Fri had only taken a couple  
16: of hours or so, he was already  
17: there. I said, under those  
18: circumstances I'll agree.  
19: I never received any notice  
20: for Mr. Kelly to give deposition  
21: today in the Tennessee matter. In  
22: fact, when I spoke to you on  
23: Tuesday, you said, well, we can  
24: either ask our questions today or

00433

01: deal on Tuesday, I never offered  
02: to do that testimony on Friday,  
03: because obviously that was a  
04: different witness.  
05: Now, I understood today we'd  
06: be doing the same thing, whereby  
07: in exchange for not bringing this  
08: witness for a full deposition  
09: under Tennessee law, that we would  
10: take two hours of testimony today.  
11: We noticed this deposition  
12: the exact same way we noticed the  
13: other deposition.  
14: And obviously, unlike  
15: Tuesday, I mean, you had notice  
16: that we were coming. We've also  
17: been sitting here for eight hours.  
18: This is the first time that I've  
19: heard of this.  
20: So to me, what I would do if  
21: I were you is, to allow your  
22: witness to go forward and testify.  
23: I'm happy to make the same  
24: agreement whereby if he'll testify

p. 00431

p. 00433

00432

01: we can ask our questions Friday,  
02: whatever you want.  
03: So I had no -- nor did I get  
04: any notice that you were going to  
05: try to ask Mr. Kelly any  
06: questions. He's been testifying  
07: for seven hours. So I'm not  
08: agreeing to have Mr. Kelly  
09: testify.  
10: We also reserve all rights  
11: as we did on Tuesday as to whether  
12: Tennessee is entitled to  
13: testimony, given my understanding  
14: that your investigation relates to  
15: manufacturers, which Mr. Kelly and  
16: HDA have very limited testimony to  
17: give regarding. So that's my  
18: position.  
19: MR. STEWART: That's fine,  
20: but the one area we have a factual  
21: disagreement, I'm sure in good  
22: faith, is that I think if you look  
23: back on our statements to each  
24: other, where we articulated our

00434

01: for two hours, we won't bring him  
02: back in this litigation.  
03: Obviously, if not, I believe  
04: this is properly noticed. It's  
05: potentially sanctionable to not  
06: allow him to testify.  
07: Also, we may well simply  
08: subpoena him for a Tennessee  
09: deposition under Tennessee rules.  
10: And if we do so, of course, I want  
11: to make sure this is clear, under  
12: the Tennessee rules, a deposition  
13: has no time and it continues from  
14: day-to-day. And we'll just, if we  
15: choose to subpoena him, based on  
16: this failure today, obviously we  
17: won't restrict our time in any  
18: way.  
19: To me, it would seem to make  
20: more sense since we are all  
21: sitting here just to go ahead and  
22: take the deposition. But  
23: obviously I can't force you to  
24: produce your witness other than to

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00435

01: provide you a notice which we have  
02: done.  
03: MR. WEINSTEIN: You actually  
04: haven't, Mike. I don't have that  
05: notice.  
06: Did you -- are you telling  
07: me that you sent me that notice?  
08: Because you have not.  
09: MR. STEWART: Well, I can  
10: tell you -- I'm speaking obviously  
11: for my law firm. I don't handle  
12: that notice --  
13: MR. WEINSTEIN: Yeah.  
14: MR. STEWART: -- but I just  
15: spoke to the person who provides  
16: the notices, whose noticed at  
17: least 45 depositions in the opioid  
18: litigation. We've never had a  
19: problem like this before today.  
20: So I think when I tell you  
21: that our firm has properly noticed  
22: this, I think it's unlikely that  
23: after so many depositions with no  
24: hiccoughs and no difficulties,

00437

01: litigation and to the opioid  
02: crisis in Tennessee has been amply  
03: disproven by the testimony that's  
04: already been taken today.  
05: But I don't -- it doesn't  
06: sound like we're going to reach an  
07: agreement --  
08: MR. WEINSTEIN: Correct.  
09: MR. STEWART: -- so I've  
10: told you what we're planning to  
11: do. I've informed you.  
12: And it sounds like with that  
13: information you're continuing to  
14: hold to your position of not  
15: allowing us to take questions  
16: today; is that correct?  
17: MR. WEINSTEIN: That's  
18: correct.  
19: MR. STEWART: Okay. That's  
20: unfortunate. And obviously we'll  
21: both just have to take the steps  
22: to do what we have to for our  
23: clients.  
24: MR. WEINSTEIN: That's

p. 00435

p. 00437

00436

01: that for some reason this  
02: deposition proved to be a problem.  
03: MR. WEINSTEIN: Mike, we are  
04: a third party. Never received  
05: your first notice until you handed  
06: it to me by e-mail when we were  
07: standing out in the hall on  
08: Tuesday. Never received a notice  
09: with respect to Mr. Kelly. So  
10: we're not changing our position.  
11: MR. STEWART: I understand.  
12: Well, I think -- I think that  
13: problem that puts us -- gives us  
14: is that then our choice, I  
15: suppose, is to seek sanctions in  
16: our litigation.  
17: Or, and as an alternative,  
18: or as coupled with that, to just  
19: subpoena your witness and come  
20: back for a deposition.  
21: MR. WEINSTEIN: Mike --  
22: MR. STEWART: I think the  
23: notion that this testimony is not  
24: relevant to the Tennessee

00438

01: correct.  
02: THE VIDEOGRAPHER: Any other  
03: statements on the record? Is that  
04: it for today?  
05: MS. MACKAY: I have a few  
06: questions.  
07: MR. WEINSTEIN: Go ahead.  
08: - - -  
09: EXAMINATION  
10: - - -  
11: BY MS. MACKAY:  
12: Q. My name is Melanie Mackay,  
13: I'm from Dechert. I'm one of the  
14: attorneys who represents Purdue. I just  
15: have a few questions for you. And I'm  
16: sorry, they are on my computer, so if I'm  
17: looking at my computer screen I'm not  
18: ignoring you. I'm just looking at my  
19: questions?  
20: A. Okay.  
21: Q. So Purdue is a manufacturer.  
22: And I believe you said earlier that  
23: Purdue is an affiliate member; is that  
24: correct?

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00439

01: A. I believe so, yes.  
02: Q. And can you describe what it  
03: means to be an affiliate member?  
04: A. So affiliate members at HDA  
05: are manufacturers who our member  
06: companies are trading partners with.  
07: They are not afforded the same membership  
08: status as the core members who are the  
09: distributor members. They are not  
10: allowed to participate in committees.  
11: They can't be on the board. They are  
12: welcome to participate in HDA meetings  
13: and external events if they register for  
14: those. But as far as communication  
15: internal, particularly in government  
16: affairs, we deal strictly with the HDA  
17: core members.  
18: Q. Plaintiff's counsel today  
19: often used the term "HDA members." And I  
20: just want to clarify how you understand  
21: that term.  
22: Unless counsel specifically  
23: referred to manufacturers, did you  
24: understand the term "members" to mean

00441

01: convene interaction. We just do an  
02: update twice a year.  
03: Q. Did Purdue or any other  
04: manufacturer ever serve on the regulatory  
05: affairs committee?  
06: A. No.  
07: Q. And I believe you testified  
08: earlier that the -- the regulatory  
09: affairs committee created the -- HDA's  
10: industry compliance guidelines; is that  
11: correct?  
12: A. That's -- that's correct.  
13: Q. The industry compliance  
14: guidelines are guidelines for  
15: distributors; is that right?  
16: A. That's correct.  
17: Q. They are not meant to be  
18: implemented by manufacturers?  
19: A. That is correct.  
20: Q. You briefly testified about  
21: the drug diversion DEA strategy task  
22: force. Do you recall that?  
23: A. I do.  
24: Q. Did manufacturer members

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00440

01: core members?  
02: A. Yes. I believe we -- did we  
03: not stipulate to that early on? Yes,  
04: that's what I'm -- yes, that was my  
05: understanding.  
06: Q. Okay. And again, the core  
07: members are distributors?  
08: A. That's correct.  
09: Q. You may have already  
10: answered this question for me. But are  
11: manufacturers members of any committees  
12: or other groups that fall under the  
13: umbrella of the government affairs  
14: department?  
15: A. The only -- the only  
16: committee within HDA that manufacturers  
17: are allowed to participate in is there's  
18: a government advisory -- manufacturers  
19: government advisory committee that meets  
20: twice a year. And that is essentially an  
21: opportunity for us to provide an update  
22: on HDA government affairs activities.  
23: But that does not meet, it  
24: does not meet in person. We do not

00442

01: serve on that task force?  
02: A. They did not.  
03: Q. Switching gears back to the  
04: industry compliance guidelines, did  
05: manufacturers participate in the  
06: development and drafting of the industry  
07: compliance guidelines?  
08: A. They did not.  
09: Q. Did the Pain Care Forum  
10: participate in the development and  
11: drafting of the industry compliance  
12: guidelines?  
13: A. They did not.  
14: MS. MACKAY: That's the only  
15: questions I have for you. Thank  
16: you.  
17: MR. WEINSTEIN: I'd like to  
18: designate the transcript as  
19: confidential, please.  
20: THE VIDEOGRAPHER: Anybody  
21: else? Okay. Do you want to close  
22: the record?  
23: The time is 5:45 p.m., May  
24: 10, 2019. We are going off the

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00443  
01: record.  
02: This ends this videotape  
03: session.  
04: (Excused.)  
05: (Deposition concluded at  
06: approximately 5:45 p.m.)  
07:  
08:  
09:  
10:  
11:  
12:  
13:  
14:  
15:  
16:  
17:  
18:  
19:  
20:  
21:  
22:  
23:  
24:

00445  
01: INSTRUCTIONS TO WITNESS  
02:  
03: Please read your deposition  
04: over carefully and make any necessary  
05: corrections. You should state the reason  
06: in the appropriate space on the errata  
07: sheet for any corrections that are made.  
08: After doing so, please sign  
09: the errata sheet and date it.  
10: You are signing same subject  
11: to the changes you have noted on the  
12: errata sheet, which will be attached to  
13: your deposition.  
14: It is imperative that you  
15: return the original errata sheet to the  
16: deposing attorney within thirty (30) days  
17: of receipt of the deposition transcript  
18: by you. If you fail to do so, the  
19: deposition transcript may be deemed to be  
20: accurate and may be used in court.  
21:  
22:  
23:  
24:

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00444  
01:  
02: CERTIFICATE  
03:  
04:  
05: I HEREBY CERTIFY that the  
witness was duly sworn by me and that the  
06: deposition is a true record of the  
testimony given by the witness.  
07:  
It was requested before  
08: completion of the deposition that the  
witness, PATRICK KELLY, have the  
09: opportunity to read and sign the  
deposition transcript.  
10:  
11:  
12: \_\_\_\_\_  
MICHELLE L. GRAY,  
13: A Registered Professional  
Reporter, Certified Shorthand  
14: Reporter, Certified Realtime  
Reporter and Notary Public  
15: Dated: May 13, 2019  
16:  
17:  
18: (The foregoing certification  
19: of this transcript does not apply to any  
20: reproduction of the same by any means,  
21: unless under the direct control and/or  
22: supervision of the certifying reporter.)  
23:  
24:

00446  
01: - - - - -  
E R R A T A  
02: - - - - -  
03:  
04: PAGE LINE CHANGE  
05: \_\_\_\_\_  
06: REASON: \_\_\_\_\_  
07: \_\_\_\_\_  
08: REASON: \_\_\_\_\_  
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22: REASON: \_\_\_\_\_  
23: \_\_\_\_\_  
24: REASON: \_\_\_\_\_

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00447

01:  
02: ACKNOWLEDGMENT OF DEPONENT  
03:  
04: I, \_\_\_\_\_, do  
05: hereby certify that I have read the  
06: foregoing pages, 1 - 448, and that the  
07: same is a correct transcription of the  
08: answers given by me to the questions  
09: therein propounded, except for the  
10: corrections or changes in form or  
11: substance, if any, noted in the attached  
12: Errata Sheet.

13:

14:

15:

16: \_\_\_\_\_  
17: PATRICK KELLY DATE

18:

19:

20: Subscribed and sworn  
to before me this

21: \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

22: My commission expires: \_\_\_\_\_

23:

24: Notary Public

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00448

01: LAWYER'S NOTES  
02: PAGE LINE  
03: \_\_\_\_\_  
04: \_\_\_\_\_  
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